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# SELECTED SPEECHES ON THE CONSTITUTION

*Edited by*  
CECIL S. EMDEN



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## INTRODUCTION

CONTROVERSY regarding the extent of 'constitutional law' is well known. But most writers of text-books on the subject, whether they enter into the controversy or not, use as their chief sources statute-law, case-law, and conventions of the Constitution. Although there are several useful source-books of selected statutes and cases, there is no book of selected speeches, made in Parliament by eminent statesmen, concerning the circumstances of changes in the statute-law, or marking developments in constitutional conventions.

The advantages of such a collection of speeches in a handy volume call for little remark. The drama of politics can be made more real to the student when he has available, marshalled under subjects, first-hand evidence of the contributions made by leading politicians in the discussion of important constitutional questions. Indeed, the changing relations of the Ministry and the Legislature, or of the House of Lords and the House of Commons, for instance, can only be effectively described with the aid of references to historic statements in Parliament; and the long struggle leading up to universal suffrage can be usefully illustrated by a series of selections from the speeches of succeeding protagonists.

*Hansard* now amounts to some 1,100 volumes, each volume containing, on an average, about 800 closely printed pages. It is a formidable and unwieldy work of reference, and by no means everywhere available. Moreover, there is no modern book on constitutional law containing frequent references, in footnotes, to parliamentary debates.

A curious custom persisted for a large number of years whereby speeches were printed in *Hansard* without any division into paragraphs. Twenty pages, or more, sometimes face the reader, who looks in vain for any indication of steps in the argument. Another feature of *Hansard*



which decreases its attractiveness as literature is the habit, which long prevailed, of converting the speeches of all but the most prominent into the third person. This process, besides rendering the speeches dull, involves ambiguities. It had, no doubt, its justification when the substance only of speeches of minor importance was given; but it was continued into the period when there was no longer any such abbreviation. Opportunity has been taken in the present volumes to deal with these two points by introducing what seems to be a reasonable amount of paraphrasing and by re-converting the third to the first person where necessary.

With such a vast storehouse of material to draw upon, it is obviously difficult to adopt principles of selection that will be satisfactory to every user of this book. It has been found desirable largely to exclude speeches of a date prior to that when parliamentary reporting became reliable. Some speeches with strong claims for inclusion have been omitted because they contain too much matter of transient interest. It is inevitable, too, that, in a compilation such as this, speeches which read easily should be preferred to those which, however effective they may have been in debate, are lacking in form and arrangement. It has been impracticable as a rule to print whole speeches. Those parts which are not of essential importance, in throwing light on constitutional development, have been omitted.

Ten speeches out of the one hundred and twelve in this collection were not made in Parliament. They are included because they seem to fill gaps. But it may be emphasized that speeches made in Parliament have a special value, since they are not merely explanatory of constitutional history: they are, as it were, part and parcel of history itself.

Although there has been no attempt, in this book, to provide a comprehensive collection of speeches, the leading statesmen seem to be fairly represented by the numbers of their speeches included. These numbers, that is to say, probably give an adequate indication of the

comparative weight of the contributions of the more notable public men to the elucidation of constitutional questions. It will be found that Gladstone heads the list numerically, followed by Fox and Peel, after whom come Disraeli, Balfour, and Asquith.

In the division of the speeches into sections, the advantage of correspondence with text-books on the Constitution has been borne in mind. But the arrangement conforms rather with those modern text-books which take due account of the importance of the interrelations of the different branches of the body politic, and do not merely treat of them in separate compartments. Furthermore, a special point has been made of illustrating democratic developments. Whatever may be thought of the practicability of appeals to public opinion or the doctrine of popular mandate, it is desirable to have available authoritative views on these subjects. No excuse seems to be required for devoting a separate section to observations on the extent to which the Ministry should be susceptible to outside influences in dealing with foreign policy.

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THE SOVEREIGN  
RELATIONS WITH MINISTRY

# THE SOVEREIGN'S INTERVENTION IN POLITICS

EARL OF SHELBURNE

(*afterwards Marquis of Lansdowne*)

*House of Lords, 1 December 1779*

(*20 Parl. Hist., 1166 ff.*)

[LORD SHELBURNE took the opportunity, when making a motion of censure on the Ministry, to express, in more plain-spoken language than that employed by most of his contemporaries, the apprehensions that were felt at risks of unconstitutional action by the King.]

[Lord Shelburne remarked that the language of Ministers, not in the House of Lords, had amounted to statements that the King was his own general, for it was actually reported with confidence, and, he believed, was universally understood to be true, that His Majesty, had the enemy attempted a landing, meant to take the command of the army.] It is said likewise that the King is his own secretary; his own first commissioner of the Admiralty, &c. This is a most preposterous idea, and a language totally unknown to the Constitution. The King might be as well his own chief justice and dispense law on the bench in Westminster-hall, as be his own general. He cannot act but through the medium of his Ministers in their several departments. Those Ministers who would permit His Majesty to head his army would take the risk upon themselves and deserve impeachment. The Constitution holds a very different language, and is precise on the subject. Every one of His Majesty's servants are separately and conjunctly responsible for every measure that they carry into execution through their respective departments; and, as a committee of council, for the measures decided there, and passing under the idea of an act of State, or

the resolution of the Crown, previously advised to it by his constitutional counsellors.

It is upon this clear doctrine of constitutional law that the well-known maxim 'The King can do no wrong' is founded. Why so? Because the King, in contemplation of law, can do nothing without previous consultation and advice. I allow, however, that a king in some cases may so far abuse his trust as to do wrong, by usurping upon the powers which the Constitution has placed in other hands. What happened more than once before might again happen. The conduct of Edward II and Richard II exhibits two melancholy instances how far a prince, under the influence of secret advice, may be tempted to mistake his own dignity, and the mutual rights and interests of himself and his subjects, which, when properly supported and wisely pursued, are for ever inseparable.

It is true that the civility of the law lays down as a maxim what it presumes, out of respect to the person of the King, will never happen; that is, that by a breach of every duty, moral and political, he will act merely on his own judgment; farther, the maxim that 'the King can do no wrong' is to the last degree blasphemous, ridiculous and absurd; I am, therefore, of opinion that a prince above all things should be ever attentive to these two considerations; namely, the exact relation he stands in with respect to his subjects, the ground of their obedience, and his own power; and the very particular station in which the laws and Constitution have placed him as an individual, most certainly at the head of government, but nevertheless bound by every motive of religion and regard to the laws, with the meanest subject in the empire; and, I am free to say that any king in this country, who shall venture hereafter to depart from those sound maxims of law and policy, will sooner or later experience the fatal consequences of exercising in his own person those active powers placed by the Constitution in his Ministers and advisers, for the due and faithful discharge of which they are, from the nature of the trust reposed in them, personally responsible.

I cannot help observing that, however improbable it may be that our present Sovereign will ever depart from those sentiments of justice and good faith so deeply engraven on his heart, many matters have lately happened which afford cause of just alarm to the friends of the Constitution. The servants of the Crown, by the aid of the dangerous influence which it carried with it, have departed from that system of government which has borne us through four most heavy and expensive wars, and has raised at length the glory of this country to the highest pinnacle of fame, accompanied with an accession of national prosperity hitherto unequalled. This system has been gradually giving way since the commencement of the present reign, till one of a very different tendency is now established in its place; a system planned in secret advice and supported by corruption. This double influence is now become in a great measure irresistible indeed: the wisest cannot well see where it may end, though I am perfectly satisfied that it points and will lead to some fatal issue.

# THE SOVEREIGN'S INTERVENTION IN POLITICS

SIR SAMUEL ROMILLY

*House of Commons, 9 April 1807*

(9 *Parl. Deb.*, 1 s., 327 ff.)

[THE Grenville Ministry were dismissed by the King in March 1807 for refusing to pledge themselves not to pursue a policy of concession to Roman Catholics. Early opportunities were taken in both Houses to move that such a pledge would be unconstitutional. The change that was taking place in the position of the Sovereign was illustrated by the fact that George III could be regarded as acting independently in politics, though, at the same time, arraignment of his personal conduct was criticized as improper and as inconsistent with ministerial responsibility. Cf. No. 4. Romilly's views on constitutional questions always merited respectful attention.]

The question now before the House is one which involves most important constitutional doctrines: it is highly interesting to the people at large, and as interesting to the Sovereign himself as to any of his subjects. It is, however, a question which, although it contains an abstract proposition, is necessary to be brought before the House, because it refers to a principle which has been recently acted upon. The true question before the House is, whether or not it is constitutionally justifiable, or rather whether it is not a high crime and misdemeanour, in any Minister in the confidence of His Majesty, to subscribe to a pledge that he will not offer any advice to His Majesty which may appear to him to be essential to the interests of the Empire. I conceive that if any Minister should give such a pledge to the Crown, it would be a high crime and misdemeanour in such a Minister to give it, and that the House would neglect its duty, and betray its



trust, if it did not impeach such a Minister for giving such a pledge.

I cannot help thinking that this is a matter of more importance to the King, in another point of view, than to any of his subjects; for if his counsellors were to pledge themselves not to advise His Majesty upon any particular subject, when it might happen that it was their duty to offer him advice, the most alarming effects might be produced from that pledge. A question more important to the Crown than the present is hardly possible to be conceived: indeed, the doctrine I have heard this night leads me, from the great respect I have for the understandings of the gentlemen who maintained it, to suspect that all I have formerly heard concerning the proper privileges of a member of Parliament, all I have heard of the duties of a confidential adviser of the Crown, all I have read, and all I have hitherto been thinking of the principles of the Constitution, and all I have read on constitutional authorities, have been entirely wrong; for I have always understood the doctrine to be, that the King can do no wrong; and I have understood that maxim to be one in which the security of the public, and that of the honour and dignity of the Crown, are united, and a maxim on which both these points materially depend; for, by this sort of pledge, the whole nature of the responsibility of State affairs would be taken away; there would be no security against the most traitorous intentions of irresponsible advisers; for Ministers would not be answerable, and could not be answerable, for any advice which they did not give; and they could not give that which they stood pledged to withhold.

This matter is the more alarming, when I learn from the right hon. the Chancellor of the Exchequer [Mr. Perceval], that he thinks there are cases wherein His Majesty acts without any advice whatever. Now, without meaning to involve His Majesty in any kind of censure, this doctrine goes to charge His Majesty with the greatest censure. But the right hon. Gent. says that the present motion goes to bring His Majesty to the bar of this House.

There is no desire whatever to include His Majesty in any censure for what has been done; nor has this motion any such tendency; on the contrary, it has a direct tendency to protect the King, and to support the maxim that he can do no wrong; which can never be done by allowing any of his Ministers to enter into a pledge not to offer him advice upon any given subject.

THE SOVEREIGN'S INTERVENTION  
IN POLITICS

LORD ERSKINE

*House of Lords, 13 April 1807*

(9 *Parl. Deb.*, 1 s., 361 ff.)

[SEE note on No. 2.]

My Lords, does not the King solemnly swear to govern according to the statutes of the realm, and to the laws and customs of the same? My Lords, the King enters into this solemn obligation: and is it consistent with the laws and customs of the realm to demand a pledge from counsellors that they will not impartially and honestly counsel? Is it consistent with the laws and customs of the realm that the King shall make a rule for his own conduct which his counsellors shall not break in upon, to disturb with their advice? Who is the man that will stand up and say that this is the law and custom of this realm? The Church, therefore, and all observations concerning Catholics, are foreign to this grand consideration; because if this can be supported and sanctioned in one instance, it may in any number of instances; and the King, instead of submitting to be advised by his counsellors, might give the rule himself as to what he will be advised in, until those who are solemnly sworn to give full and impartial counsel, and who are responsible to the public for their conduct as his advisers, might be penned up in a corner of their duties and jurisdiction, and the State might go to ruin.

But no doubt it will be said that here again is a direct attack upon the King. I deny it again, it is no attack upon the King. I cannot see the King but in the responsible officers of State, who, by serving him in office, sanction all proceedings of the Crown. The noble Earl who spoke first on that side declared that if an address was presented

to the King to know the author of the supposed advice, His Majesty would return for answer that his adviser was the faithful monitor within his own breast in the suggestions of his conscience. My Lords, the King might undoubtedly give such an answer, but I should be glad to see the Ministers who would be bold enough to deliver such an answer to Parliament. My Lords, I will hazard my reputation as a lawyer with your Lordships, that the responsible Minister who was the organ of that message here would be subject to an impeachment. The Great Hall [at Westminster, as a court of law], and not this Chamber, would be the proper forum for the consideration of it.

The King can perform no act of government himself, and no man ought to be received within the walls of this House to declare that any act of government has proceeded from the private will and determination, or conscience of the King. The King, as chief magistrate, can have no conscience which is not the trust of responsible subjects. When he delivers the seals of office to his officers of State, his conscience, as it regards the State, accompanies them. No man in England, my Lords, is less disposed than I am to abridge the King's prerogative, or to degrade the dignity of his high office, by reducing him to a cypher. The public, on the contrary, are entitled to the full benefit, nay, they have a right in reason to expect the advantages of the personal virtues and capacity of the King. Whatever follows from either is therefore his own. The fame and honour of his actions are his own; but, as all men must have errors, the wisdom of our government turns them aside from him. The maxim that the King can do no wrong, does not seek to alter the nature and constitution of things, but to preserve the government not only against the impeachment of crime, but even against the irreverence and loss of dignity arising from the imputation of it. No act of State or government can, therefore, be the King's; he cannot act but by advice; and he who holds office sanctions what is done, from whatever source it may proceed. This, my Lords, is not the legal

fiction of the Constitution, but the practical benefit and blessing of it. I am pleading the cause of the King and of the people together, in enforcing it; and I never will remain silent whilst this principle is disturbed. Apply it, my Lords, to the case before us. We never should have recourse to a simile, when the case itself will serve us for illustration. . . .

I hope I have not departed in anything I have said from the declaration I made the other day of my duty and attachment to His Majesty, which is most sincere and affectionate. What weighs heavily on my mind, my Lords, is the dangerous and alarming distinction between putting by from time to time the claims and expectations of the Catholics, which I am as much disposed to as any man, and the public declaration of unalterable refusal upon a principle which admits no alteration. I trust we shall never see the danger of such a declaration brought home to a practical test in the discontent of subjects who might otherwise be affectionate and faithful.

# MINISTRY'S REQUEST TO SOVEREIGN FOR CREATION OF PEERS

EARL GREY

*House of Lords, 17 May 1832*

(12 *Parl. Deb.*, 3 s., 1004 ff.)

[ON 17 May 1832 the Duke of Wellington, having announced his inability to form a Ministry, criticized as unconstitutional Lord Grey's conduct in asking the King for an assurance respecting the creation of peers necessary to secure a majority for the Reform Bill in the House of Lords. Lord Grey replied justifying his conduct. In fact, he secured the desired assurance from the King on the following day. Cf. Nos. 9 and 10.]

It is not necessary to go into this long-disputed question of Reform. The Bill, when it was brought forward, received the general approbation of the country, such as no former measure had ever yet commanded. I should like to know if it had not some effect in controlling public opinion, and quieting that agitation which the resistance to that measure raised. I should like to know how it is that even the greatest enemies to Reform now acknowledge that some Reform is necessary—that they no longer oppose it, and at last confess that it must also be an extensive Reform. I think, then, I was justified in bringing in a measure consistent with those principles I have maintained through life; and, if it had been suffered to pass, as it ought to pass, I have no doubt it would have given universal satisfaction throughout the country.

This Bill met with a formidable opposition. It passed the House of Commons, after an appeal to the country, by a triumphant majority. Most unfortunately it was rejected by this House. Another Bill, as efficient as this, the noble Duke [the Duke of Wellington] says, was brought in; but, that it is more dangerous, I dispute and

deny: it had the good fortune to receive the sanction to its principles of a majority of your Lordships on the Second Reading. I now come to the point which conducted to the present state of affairs. I had hoped that it would pass the Committee without such a change as would render it impossible for me to consent to its being sent down to the other House; but, on the very first clause, a motion was made, the result of which was described as trifling and unimportant; but, in my opinion, it proved such a disposition in this House, and was essentially of such injury to the Bill, that I felt I should not be justified in going further, in deluding the people with the prospect of a success which was never to be attained, and in continuing, by the discussions in the Committee, that irritation throughout the country which it was so necessary to allay.

It was then for me to consider which of two courses I would pursue—whether I would abandon the Bill altogether, or whether I would recommend that measure to His Majesty which could alone enable the Government to go on with the Bill. We adopted the latter alternative, and did propose to His Majesty that advice which the noble Duke has arraigned so severely. In the course of his observations the noble Duke stated that this had been acted on as a threat. I am not sensible that I am liable to that imputation. Pressed and goaded as I have been upon the subject, I do not think I breathed a syllable of the matter, excepting once. It was to state that I felt as strongly as most noble Lords the objections alluded to, unless in such a case of necessity as would justify the constitutional exercise of the prerogative of the Crown to prevent a collision between the two Houses of Parliament; that was the precise situation in which we were placed; we had either to recommend this measure with all the risk of consequences, or suffer this House to come into collision with public opinion and the other House of Parliament—a collision to which, if this House were unwise enough to commit itself, it is not easy to suppose that it can be victorious. . . .

We were under the necessity of offering the advice to create as many new peers as would carry the measure of Reform through this House un mutilated in any of its essential provisions, or resign our offices. Now I say that, under these circumstances, the advice to create new peers was required. The noble and learned Lord says that it was not constitutional; but I say that it was constitutional, and I can refer him to books of authority on that subject, in which it is distinctly asserted that one of the uses of vesting the prerogative of creating new peers in the Crown is to prevent the possibility of the recurrence of those evils which must otherwise result from a permanent collision between the two Houses of Parliament; and this danger was rendered imminent by the opposition made to the Reform Bill by the noble Lords on the other side of the House. And, I ask, what would be the consequences if we were to suppose that such a prerogative did not exist, or could not be constitutionally exercised. The Commons have a control over the power of the Crown by the privilege, in extreme cases, of refusing the Supplies; and the Crown has, by means of its power to dissolve the House of Commons, a control upon any violent and rash proceedings on the part of the Commons; but, if a majority of this House is to have the power, whenever they please, of opposing the declared and decided wishes both of the Crown and the people, without any means of modifying that power, then this country is placed entirely under the influence of an uncontrollable oligarchy. I say that, if a majority of this House should have the power of acting adversely to the Crown and the Commons, and was determined to exercise that power without being liable to check or control, the Constitution is completely altered, and the Government of this country is not a limited monarchy; it is no longer, my Lords, the Crown, Lords, and Commons, but a House of Lords—a separate oligarchy—governing absolutely the others.

On these grounds we tendered that advice to His Majesty which we were well justified, by the spirit and by the letter of the Constitution, in tendering; nay, more—



which, under the circumstances, it was our imperative duty to tender, considering the consequences that were likely to result from the failure of the measure. But then it is said by the noble Duke that the Ministers had, by their resignation, left His Majesty alone, and this was said as if there had been something invidious and improper in this conduct of Ministers. I would ask in what this conduct differs from any other resignation. The Ministers offered that advice to His Majesty which they thought themselves called upon to offer in the situation in which we were placed. His Majesty was pleased to refuse compliance with our advice, and then we most respectfully tendered our resignations, being the only course which remained for us to follow, if we were prepared to act as honest and independent men. We did not, however, leave His Majesty alone or abandon him, in any invidious or ungenerous sense of the word, but merely acted in the manner that was due to our character and honour as honest and independent men.

I believe that the noble Duke himself, on reflection, will be convinced that there was no want on our part of respectful duty to His Majesty; and that there was nothing extraordinary in our resignation, considering the circumstances in which we were placed; and that we have deserved no reproaches for any audacious or ungracious abandonment of His Majesty. If we could have been guilty of any invidious or ungracious proceedings towards His Majesty, or any want of duty with respect to him, we must have been the most ungrateful of men; for never did men owe more to a Sovereign for the uniform kindness, condescension, and confidence with which we have been treated by His Majesty; and, as to the attacks to which the noble Duke alludes, as having been made on His Majesty in the public Press, all I can say is that I had no concern whatever in these attacks, and that neither the noble Duke, nor any other peer in this House, can be more distressed at them than I have been. I have always proclaimed, and now do in the most public manner proclaim, that I have always firmly believed, and do firmly

believe, that His Majesty was actuated by the very best motives on this as on every other occasion.

I do not think it necessary for me to say any more on the present occasion, for I suppose nobody will expect that I should disclose what has passed confidentially between His Majesty and myself, without having first distinctly obtained His Majesty's consent and permission; and it ought always to be recollected that it is contrary to the principles and the practice of the Constitution to arraign the personal conduct of the Sovereign. This much I thought it my duty to say in vindication of His Majesty, to whom I must ever remain bound in gratitude for the kindness and confidence with which he has been pleased always to treat me; for the present it is not fitting that I should make any communication as to what has passed between His Majesty and myself, beyond what I have before stated. I before stated that I was again in communication with His Majesty, because I thought that, as to that particular, and as to the views which I myself entertained, there ought to be no concealment from this House; but I cannot state at this moment that this communication between His Majesty and myself has been attended with any result: all I can state is that I still continue to be of opinion that full effect ought to be given to the Bill of Reform now on your Lordships' Table, and that it ought to be passed unmutated and unimpaired in all its main principles and essential provisions.

THE SOVEREIGN'S RESPONSIBILITY FOR  
DISMISSAL OF MINISTERS

SIR ROBERT PEEL

*House of Commons, 24 February 1835*

(26 *Parl. Deb.*, 3 s., 215 ff.)

[In December 1834 the Melbourne Ministry was, in effect, dismissed by the King. Peel was travelling in Italy at the time. Peel's Ministry, formed on his return, faced a new Parliament in February 1835 after appealing to the People at a general election. Conscious of recent developments in the Constitution, he at once accepted the principle that he was responsible for the action of the Sovereign. Cf. Nos. 2 and 3. There is included in this speech a passage dealing with the proper time for a general election. Cf. Nos. 11 and 17 to 19. Peel's views in regard to the People's part in government seem to have reached their most democratic level at the time of the issue of the Tamworth Manifesto and the making of this speech. The effect of the passing of the Reform Act of 1832 was still fresh.]

I stand here as the Minister of the Crown—placed in this situation by no act of my own—in consequence of no dexterous combination with those to whose principles I have been uniformly opposed, and with whom I might frequently have made, had I been so inclined, a temporary alliance for the purpose of embarrassing the former Government. I stand here in fulfilment of a public duty, shrinking from no responsibility, with no arrogant pretensions of defying or disregarding the opinions of the majority of this House, yet still resolved to persevere to the last, so far as is consistent with the honour of a public man, in maintaining the prerogative of the Crown, and in fulfilling those duties which I owe to my King and to my country.

In vindication of the course which I have pursued, it is necessary that I should refer to the circumstances which preceded the dissolution of the last Government. I have been asked whether I would impose on the King in his personal capacity, the responsibility of the dismissal of that Government? In answer to this question, I will at once declare, that I claim all the responsibility which properly belongs to me as a public man; I am responsible for the assumption of the duty which I have undertaken, and, if you please, I am, by my acceptance of office, responsible for the removal of the late Government. God forbid that I should endeavour to transfer any responsibility which ought properly to devolve upon me to that high and sacred authority which the Constitution of this country recognizes as incapable of error, and every act of which it imputes to the advice of responsible counsellors.

But, whilst I disclaim all intention of shrinking from that responsibility, which one, situated as I am, must necessarily incur, I must at the same time unhesitatingly assert, what is perfectly consistent with the truth, and what is due to respect for my own character—namely, that I was not, and under no circumstances would I have been, a party to any secret counselling or instigating the removal of any Government. But, although I have not taken any part in procuring the dismissal of the late Government, although I could not, from circumstances which are notorious to the world, hold communication with any of those with whom I have now the honour to act, much less with the highest authority in the State, as to the propriety or policy of that dismissal, still I do conceive that by the assumption of office, the responsibility of the change which has taken place is transferred from the Crown to its advisers; and I am ready—be the majority against me what it may—to take all the responsibility which constitutionally belongs to me, and to submit to any consequences to which the assumption of that responsibility may expose me. . . .

I now come to the subject of the Dissolution of the late Parliament. I have been asked whether I take upon myself

the responsibility of that proceeding, and without a moment's hesitation, I answer that I do take upon myself the responsibility of the dissolution. The moment I returned to this country to undertake the arduous duties now imposed upon me, I did determine that I would leave no constitutional effort untried to enable me satisfactorily to discharge the trust reposed in me. I did fear that, if I had met the late Parliament, I should have been obstructed in my course, and obstructed in a manner, and at a season, which might have precluded an appeal to the people. But it is unnecessary for me to assign reasons for this opinion. Was it not the constant boast that the late Parliament had unbounded confidence in the late Government? And why should those, who declare they are ready to condemn me without a hearing, be surprised at my appeal to the judgment of another, and a higher, and a fairer tribunal—the public sense of the people?

Notwithstanding the specious reasons which have been usually assigned for the dissolution, I believe it will be found that, whenever there has occurred an extensive change of Government, a dissolution of Parliament has followed. In the year 1784 a change took place in the Government, Mr. Pitt was appointed to the office of Prime Minister, and in the same year a dissolution took place. Again, in 1806, when the Administration of Lords Grey and Grenville was formed, the Parliament, which had only sat four years, was shortly after the assumption of power by those noblemen dissolved. It was on that occasion urged that, a negotiation with France having failed, it became necessary to refer to the sense of the country, but I never will admit that the failure of the negotiation with France could constitute any sufficient grounds for the dissolution of a Parliament which there was not the slightest reason to believe was adverse to the continuance of the war, or dissatisfied with the conduct of the negotiation. In the year 1807, another change took place in the Government by the accession of Mr. Perceval to power, and there again a dissolution immediately took place. In the year 1830, Earl Grey was called into office

as Prime Minister, and shortly after the vote in committee on the Reform Bill, the Parliament, which had been elected in 1830, was dissolved in 1831. Hence it appeared that, in the cases of the four last extensive changes in the Government, those changes had been followed by a dissolution of the then existing Parliament. The present, however, I believe to be the first occasion upon which the House of Commons has ever proceeded to record its dissatisfaction at the exercise of the prerogative of dissolution.

I have been told, and indeed, it has been implied in the course of this debate, that although I might have been no party to the dismissal of the late Ministry and although I was utterly ignorant of the intention to dismiss it, yet that I ought to have advised the Throne to recall the Government of Lord Melbourne, and that I should have considered myself disqualified from undertaking the Government of the country. The whole ground of objection to my possession of power is this, that in consequence of the revolution in power which has taken place, and of the necessity of acting in the spirit and on the principles of the Reform Bill,—I am unfit to be in office, and therefore ought to have declined it. But I have never considered the Reform Bill to be a machine, the secret springs of which are only known to those by whom it has been constructed, or that its effect is to be the exclusion of any portion of the King's subjects from their Monarch's service. No sacrifice of principle was required from me by the King; on the contrary, I was desired to form an Administration such as seemed to myself best for the public service, to adopt such measures as I conceived most likely to advance the public interests; and I will, therefore, ask any man outside the walls of Parliament, and free from the contagion of party, whether he would not entertain a mean opinion of me, had I, under such circumstances, said to the King,—‘I feel for your difficulties, but I decline your service; I never can propose measures that will satisfy the House of Commons, and I therefore advise you to resort to some other quarter for assistance.’

THE SOVEREIGN ADVISED TO DISMISS  
A MINISTER

LORD JOHN RUSSELL

*House of Commons, 3 February 1852*

(119 *Parl. Deb.*, 3 s., 89 ff.)

[RUSSELL, as Prime Minister, explained to the House of Commons the reasons why he advised the Queen to supersede Palmerston in his office of Secretary of State for Foreign Affairs. He was, it is generally agreed, wrong in bringing the Sovereign, in her personal capacity, into the discussion. It was the Prime Minister who was responsible for the dismissal, and not the Queen. Unfortunately Russell was misled by the Queen's frequently expressed dislike of Palmerston's conduct of foreign affairs and by her anxiety for his removal. It became known many years afterwards that the Queen, in ignorance of the proper constitutional position, had contemplated dismissing Palmerston herself (*Letters of Queen Victoria*, 1st Series, vol. ii, p. 416 (n.).)]

It was with deep regret that I found that circumstances had occurred such as in my mind made it impossible for me to act any longer with my noble Friend in that situation in which he had shown such distinguished ability. But, Sir, before I enter into further explanation, it is as well that I should state what I conceive to be the position of a Secretary of State as regards the Crown in the administration of Foreign Affairs, and what I conceive to be the position of a Secretary of State for Foreign Affairs as regards the Prime Minister of this country. I think that when, on the one hand, the Crown, in consequence of a vote of the House of Commons, places its constitutional confidence in a Minister, that Minister is bound, on the other hand, to the Crown, to the most frank and full detail of every measure that is taken, and is bound

either to obey the sanction of the Crown, or to leave to the Crown that full liberty which the Crown must possess, of no longer continuing that Minister in office.

Such, Sir, I hold to be the general doctrine; but with regard to my noble Friend, it did so happen, that in 1850 precise terms were laid down, in a communication made to my noble Friend, with respect to the transaction of business between the Crown and the Secretary of State for Foreign Affairs. I became the organ of making that communication to my noble Friend, and thus became responsible for the document I am about to read. I shall refer only to that part of the document which has reference to the subject now under consideration:

'The Queen requires, first, that Lord Palmerston will distinctly state what he proposes in a given case, in order that the Queen may know as distinctly to what She is giving Her Royal Sanction. Secondly, having once given Her sanction to a measure, that it be not arbitrarily altered or modified by the Minister. Such an act She must consider as failing in sincerity towards the Crown, and justly to be visited by the exercise of Her constitutional right of dismissing that Minister. She expects to be kept informed of what passes between him and the foreign Ministers before important decisions are taken, based upon that intercourse; to receive the foreign despatches in good time; and to have the drafts for Her approval sent to Her in sufficient time to make Herself acquainted with their contents before they must be sent off. The Queen thinks it best that Lord John Russell should show this letter to Lord Palmerston.'

I sent that accordingly, and received a letter from my noble Friend to the following effect:

'I have taken a copy of this memorandum of the Queen, and will not fail to attend to the directions which it contains.'

I conceive those directions were such as should be maintained between the Foreign Secretary and the Crown.

And now, Sir, I will state what is the duty of the Prime Minister, and I will state it, not in my own words, but in the words which were used by the late Sir Robert Peel,



in giving evidence before the Committee of this House with respect to Official Salaries. The words are:

'Take the case of the Prime Minister. You must presume that he reads every important despatch from every foreign Court. He cannot consult with the Secretary for Foreign Affairs, and exercise the influence which he ought to have with respect to the conduct of Foreign Affairs, unless he be master of everything of real importance passing in that department.'

I conceive Sir Robert Peel there lays down the duty of a Prime Minister, and makes him responsible for the business of the country. I may say, likewise, that I was informed, both by Her Majesty and Sir Robert Peel, that Sir Robert Peel had advised Her Majesty to consult me whenever a question should arise with respect to foreign affairs, and to take my advice on such question.

Such, then, being the state of the relations which I held towards the Crown on the one hand, and to my noble Friend on the other, I must say I have found the situation one of great difficulty. When my noble Friend first held the seals of the Foreign Office, he was placed under Earl Grey, a statesman of age and experience, to whom my noble Friend, then young in that particular office, would no doubt readily defer. When Lord Melbourne was at the head of the Government, that noble Lord's long intimacy and connection with my noble Friend would naturally incline him to place some confidence in the conduct of my noble Friend. Without either of these advantages I have certainly found, from time to time, that those relations were very difficult to maintain; while, at the same time, I felt that great responsibility devolved upon me.

[Lord John Russell then described the acts of Lord Palmerston in the autumn of 1851 which he alleged were unconstitutional; and he proceeded to discuss the principles involved. He said:] . . . the Secretary of State for Foreign Affairs, putting himself in the place of the Crown, neglected and passed by the Crown, in order to give his own opinion with respect to the state of affairs in France.

Now it struck me that a Secretary of State, constitutionally, has no such power. It appears to me that he can only act with the sanction and the authority of the Crown in matters of very great importance. In matters of small importance, I am ready to admit that the Secretary of State must be allowed to take a course which to him seems best, without a continuous reference to the Crown; but in this matter, which was of the utmost importance, namely, that of giving the moral influence and support of England to the act of the President of the French Republic, it seems to me it was an affair so great that the opinion, not only of the Prime Minister, but of the Cabinet, should be taken, and that no such opinion should have been expressed without their concurrence, and without the sanction of the Crown. . . .

The French people might say, and were justly entitled to say, 'What you call in England Parliamentary government has produced such evils in France, it has so frequently led to convulsions, it is so incompatible with the order and peace of society in our own country, that it ought to be at once abolished, and a different system established in its place.' If the French nation chooses to say that, who has the right or the least pretence to contradict it? But it is another question to give the moral approbation of England, to place the broad seal of England upon that doctrine with regard to a great country. If France has so resolved—if that is her decision—I should do nothing but regret that the great qualities of human nature, brought out by parliamentary government, by free discussion, and by a free Press, should henceforth not have their full development. But with respect to our position it will be recollected, that during the existence of the present Administration, with my noble Friend as its organ, we have been continually giving the moral support and the moral sympathy of England to constitutional parliamentary government. We have done so in Spain, we have done so in Portugal, and we have done so in Piedmont; and none was more ready than my noble Friend to impart that moral influence. But if we were at

once to sign our approbation to this act of the President, however necessary, how could we say to other countries that we had advised other countries to continue the parliamentary government which they enjoyed? It would, therefore, have appeared to me to have been a signal and a wide departure from that policy which the Government had hitherto pursued, and which my noble Friend especially sanctioned. But when this took place, as I conceive the authority of the Crown had been set aside, and set aside for a purpose which they could not sanction, it appeared to me that I had no other course than to inform my noble Friend, that while I held office, he could no longer hold the seals of the Foreign Office. Later in the day, and after I had formed that resolution, I received a long letter from my noble Friend, stating the reasons why he approved of the act of the President of France. But it appeared to me that those reasons no longer touched the case; because the real question now was, whether the Secretary of State was entitled, of his own authority, to write a despatch as the organ of the Queen's Government, in which his colleagues had never concurred, and to which the Queen had never given Her Royal sanction? It appeared to me, that without degrading the Crown, I could not advise Her Majesty to retain that Minister in the Foreign Department of Her Government. I at the same time informed Her Majesty that a correspondence had taken place between Lord Palmerston and myself with respect to Her Majesty's wishes on the subject of despatches and diplomatic notes. This was on the Wednesday. I waited till the Saturday following, in order to consider and reconsider the matter before I finally resolved to submit this correspondence to Her Majesty. On Thursday I informed my noble Friend that I should wait till that day, as I thought it possible that he might either propose some course, or suggest some course, by which a separation might be avoided. Nothing of that kind, however, occurred, and being then as fully convinced as before, I, on Saturday, the 20th, wrote to Her Majesty, conveying copies of the correspondence which

had passed, and likewise intimating my advice to Her Majesty, that my noble Friend should be required to give up the seals of the Foreign Office. In coming to a decision so weighty, by which I must be separated from a colleague with whom I had acted so long, whose abilities I admired, and whose policy I had approved, I felt fully—whether I was right or wrong in so acting, I do not say—that it was one which I am bound to take by myself, and one upon which I ought not to consult any of my colleagues, and one for which, in order to avoid anything which might hereafter be tortured into the appearance of a cabal, I ought to assume the sole and entire responsibility. . . .

Now, Sir, with whatever pain the separation may have taken place, I was convinced then, and am convinced still, that, consistently with what is due to the honour of the Crown and to the character of the country, I could take no other course than that which I took. But here, let me state—because some parts of my statement may perhaps have led to that opinion in the minds of some hon. Members—that I am far from accusing my noble Friend of any intention of personal disrespect to the Crown. My belief is, that having been long conversant with the affairs of the Foreign Office, and having great confidence in his own judgment and his own mode of managing its affairs, he forgot and neglected that which was due to the Crown, and that also which was due to his colleagues; but without any intention of giving any personal disrespect to either.

THE SOVEREIGN ADVISED TO DISMISS  
A MINISTER

LORD PALMERSTON

*House of Commons, 3 February 1852*

(119 *Parl. Deb.*, 3 s., 105 ff.)

[SEE note on No. 6. Palmerston's defence of his conduct, which was alleged by the Prime Minister as ground for dismissal, was weakened by his surprise at the extent of the indictment brought against him and by his indisposition to discuss the dismissal otherwise than as the act of the Prime Minister, formally approved by the Sovereign.]

The noble Lord at the head of the Government began the remarks he made to the House by stating his opinion of the relations which ought to subsist between the Foreign Secretary and the Crown on the one hand, and the Foreign Secretary and Prime Minister on the other. In that definition I most entirely concur, and I flatter myself I have done nothing which is inconsistent with either of those relations. Sir, the practice that prevails in the Foreign Office was that which the noble Lord has described as laid down in the Memorandum of 1850; but the practice did not begin at that time, but was in existence before—namely, that no important political instruction is ever sent to any British Minister abroad, and no note addressed to any foreign diplomatic agent, without the draught being first submitted to the head of the Government, in order that the pleasure of the Crown might be taken upon it; and if either the higher authority or the Prime Minister suggested alterations, those alterations were made, or the despatch withheld. It has, I know, sometimes been said, that though the general tenor of the policy pursued by me had met with the approval of Her Majesty's Government, and was right, yet there was,

notwithstanding, something in the manner of conducting it calculated to excite irritation on the part of foreign Governments. Now, the manner of conducting that business consisted in the framing of despatches or notes; and I have stated that these despatches and notes were never sent unless they had obtained the previous sanction of the noble Lord at the head of the Government.

[Lord Palmerston then set out his version of the facts respecting the transactions which brought him into collision with the Queen and the Prime Minister.]

I will not trouble the House with all the arguments in my letter of the 16th to the noble Lord at the head of the Government, or with all the illustrations it contained. My noble Friend replied to that letter, that he had come to the reluctant conclusion that it would not be consistent with the interests of the country to allow the management of the foreign affairs of the country to remain any longer in my hands. He said that the question between us was not whether the President was justified or not in what he had done, but whether I was justified or not in having expressed any opinion on the subject. To that I replied, that of course I should be ready to give up the Seals whenever my successor was appointed; but I added that there is in diplomatic intercourse a well-known and perfectly understood distinction between official conversations, by which Governments are bound, and which represent the opinions of Governments, and those non-official conversations by which Governments are not bound, and in which the speakers do not express the opinions of Governments, but simply the opinions they may themselves for the moment entertain. I said, that in my conversation with Count Walewski [the French Ambassador in London], on the 3rd December, nothing passed which could in the slightest degree fetter the action of the Government, and that if the doctrine of the noble Lord were established, and if the Foreign Secretary were to be precluded from expressing on passing events any opinion to a Foreign Minister, except in the capacity of an organ of a previously consulted Cabinet, there would

be an end to that freedom of intercourse between Secretaries of State for Foreign Affairs and Foreign Ministers, which tends so much to the facility of public business. To this my noble Friend replied that my letter left him no other course than to ask Her Majesty to appoint a successor to me. Now, it is my humble opinion that my doctrine is right, and that of my noble Friend is wrong; because it is obvious that, if the Secretary of State for Foreign Affairs were never allowed in easy and familiar conversation with Foreign Ministers to express an opinion on foreign events, whether important or not, not as the opinion of the Government, but as an opinion which he had formed himself at the moment, then such a restriction on his intercourse with Foreign Ministers would be extremely injurious and very prejudicial to the public service. . . .

But I am told now, 'It is not your conversation with Count Walewski that is complained of, but your despatch to the Marquess of Normanby' [the British Ambassador in Paris]. What did I state in that despatch, in reference to which a great parade is made, as if I had been guilty of breach of duty to the Crown, and of my obligations to the Prime Minister, in sending it without previously communicating with the noble Lord? No man can lay down the matter more strongly than I have as to the obligations of the Secretary of State for Foreign Affairs. I have always admitted that if the Secretary of State for Foreign Affairs sends a despatch of importance to an Ambassador abroad, without ascertaining the opinion of the Prime Minister, or Crown, he is guilty of a breach of duty. But there are many cases in which he perfectly well knows that he is only expressing the opinion of the Government, and when inconvenience might arise from delay. There are many cases in which a sedulous and careful observance of the strict rule on my part has been attended with inconvenience to the public service, and has exposed me to imputations of neglect and delay in answering despatches received. . . .

As for the noble Lord advising the Queen to appoint

a successor to me, that was a step which it was perfectly competent for the noble Lord to take without assigning any reason to me. But he chose to assign a reason, and that reason was, that I did, in conversation with Count Walewski, that which he and other divers members of the Cabinet appear also to have done in conversation with the same person. I do not, however, dispute the right of the noble Lord to remove any member of the Government whom he may think it better to remove than to retain in the Cabinet. With respect to myself, the noble Lord has done me justice by saying that the course of foreign policy of which I was the instrument had received the constant approbation and support of the rest of the Government. I think that course of foreign policy was the proper one for this country to pursue. I always thought it was the duty of the Government of this country to make the interests of England the polar star to guide our course; and that it was my duty to be—as the noble Lord described me in 1850, neither the Minister of Austria, of Russia, nor of Prussia, but the Minister of England. . . .

Sir, having conducted the affairs of this country through periods of considerable difficulty, it was my good fortune to be the instrument of peace, and to combine therewith the not unsuccessful assertion of the interests of England. And I think I may say that in quitting office I have handed over the foreign relations of the country to my successor with the honour and dignity of England unsullied, and leaving her character and reputation standing high among the nations of the world.



## THE SOVEREIGN AND THE CONSTITUTION

*BENJAMIN DISRAELI**(afterwards Earl of Beaconsfield)**Manchester, 3 April 1872**(Selected Speeches of the Earl of Beaconsfield, ed. T. E. Kebbel, vol. II, pp. 491 ff.)*

[DURING the months immediately preceding this speech Radical complaints of the heavy cost of the Monarchy had been voiced in the country; and Disraeli took the opportunity of discoursing on the importance of the place occupied by the Crown in the Constitution.]

Gentlemen, the programme of the Conservative Party is to maintain the Constitution of the country. I have not come down to Manchester to deliver an essay on the English Constitution; but when the banner of Republicanism is unfurled—when the fundamental principles of our institutions are controverted—I think, perhaps, it may not be inconvenient that I should make some few practical remarks upon the character of our Constitution—upon that monarchy, limited by the co-ordinate authority of Estates of the realm, which under the title of Queen, Lords and Commons, has contributed so greatly to the prosperity of this country, and with the maintenance of which I believe that prosperity is bound up.

Since the settlement of that Constitution, now nearly two centuries ago, England has never experienced a revolution, though there is no country in which there has been so continuous and such considerable change. How is this? Because the wisdom of your forefathers placed the prize of supreme power without the sphere of human passions. Whatever the struggles of parties, whatever the strife of factions, whatever the excitement and exaltation of the public mind, there has always been something in this country round which all classes and parties could

rally, representing the majesty of the law, the administration of justice, and involving, at the same time, the security for every man's rights and the fountain of honour. Now, it is well clearly to comprehend what is meant by a country not having a revolution for two centuries. It means, for that space, the unbroken exercise and enjoyment of the ingenuity of man. It means, for that space, the continuous application of the discoveries of science to his comfort and convenience. It means the accumulation of capital, the elevation of labour, the establishment of those admirable factories which cover your district; the unwearied improvement of the cultivation of the land, which has extracted from a somewhat churlish soil harvests more exuberant than those furnished by lands nearer to the sun. It means the continuous order which is the only parent of personal liberty and political right. And you owe all these, gentlemen, to the Throne.

There is another powerful and most beneficial influence which is also exercised by the Crown. Gentlemen, I am a party man. I believe that, without party, parliamentary government is impossible. I look upon parliamentary government as the noblest government in the world, and certainly the one most suited to England. But without the discipline of political connection, animated by the principle of private honour, I feel certain that a popular Assembly would sink before the power or the corruption of a Minister. Yet, gentlemen, I am not blind to the faults of party government. It has one great defect. Party has a tendency to warp the intelligence, and there is no Minister, however resolved he may be in treating a great public question, who does not find some difficulty in emancipating himself from the traditionary prejudice on which he has long acted. It is, therefore, a great merit in our Constitution that before a Minister introduces a measure to Parliament, he must submit to an intelligence superior to all party, and entirely free from influences of that character.

I know it will be said that, however beautiful in theory,

the personal influence of the Sovereign is now absorbed in the responsibility of the Minister. I think you will find there is a great fallacy in this view. The principles of the English Constitution do not contemplate the absence of personal influence on the part of the Sovereign ; and, if they did, the principles of human nature would prevent the fulfilment of such a theory. I need not tell you that I am now making on this subject abstract observations of general application to our institutions and our history. But take the case of a Sovereign of England who accedes to his throne at the earliest age the law permits and who enjoys a long reign—take an instance like that of George III. From the earliest moment of his accession that Sovereign is placed in constant communication with the most able statesmen of the period, and of all parties. Even with average ability it is impossible not to perceive that such a Sovereign must soon attain a great mass of political information and political experience. Information and experience, whether they are possessed by a Sovereign or by the humblest of his subjects, are irresistible in life. No man with the vast responsibility that devolves upon an English Minister can afford to treat with indifference a suggestion that has not occurred to him, or information with which he had not been previously supplied. But, gentlemen, pursue this view of the subject. The longer the reign, the influence of that Sovereign must proportionately increase. All the illustrious statesmen who served his youth disappear. A new generation of public servants rises up. There is a critical conjuncture in affairs—a moment of perplexity and peril. Then it is the Sovereign can appeal to a similar state of affairs that occurred perhaps thirty years before. When all are in doubt among his servants he can quote the advice that was given by the illustrious men of his early years, and though he may maintain himself within the strictest limits of the Constitution, who can suppose when such information and such suggestions are made by the most exalted person in the country that they can be without effect? No, gentlemen; a Minister who could

venture to treat such influence with indifference would not be a Constitutional Minister, but an arrogant idiot. . . .

Gentlemen, I trust I have now made some suggestions to you respecting the monarchy of England which at least may be so far serviceable that when we are separated they may not be altogether without advantage; and now I would say something on the subject of the House of Lords. It is not merely the authority of the Throne that is now disputed, but the character and influence of the House of Lords that are held up by some to public disregard. I shall not stop for a moment to offer you any proofs of the advantage of a Second Chamber; and for this reason. That subject has been discussed now for a century, ever since the establishment of the Government of the United States, and all great authorities, American, German, French, Italian, have agreed in this, that a representative government is impossible without a Second Chamber. And it has been, especially of late, maintained by great political writers in all countries that the repeated failure of what is called the French Republic is mainly to be ascribed to its not having a Second Chamber.

But, however anxious foreign countries have been to enjoy this advantage, that anxiety has only been equalled by the difficulty which they have found in fulfilling their object. How is a Second Chamber to be constituted? By nominees of the sovereign power? What influence can be exercised by a Chamber of nominees? Are they to be bound by popular election? In what manner are they to be elected? If by the same constituency as the popular body, what claim have they, under such circumstances, to criticise or control the decisions of that body? If they are to be elected by a more select body, qualified by a higher franchise, there immediately occurs the objection, why should the majority be governed by the minority? The United States of America were fortunate in finding a solution of this difficulty; but the United States of America had elements to deal with which never occurred before, and never probably will again, because they formed their illustrious Senate from the materials

that were offered them by the thirty-seven States. We, gentlemen, have the House of Lords, an assembly which has historically developed and periodically adapted itself to the wants and necessities of the times.

What is the first quality which is required in a Second Chamber? Without doubt, independence. What is the best foundation of independence? Without doubt, property. The Prime Minister of England has only recently told you, and I believe he spoke quite accurately, that the average income of the members of the House of Lords is £20,000 per annum. Of course there are some who have more and some who have less; but the influence of a public assembly, so far as property is concerned, depends upon its aggregate property, which, in the present case, is a revenue of £9,000,000 a year. But you must look to the nature of this property. It is visible property, and therefore it is responsible property, which every ratepayer in the room knows to his cost. But it is not only visible property; it is, generally speaking, territorial property; and one of the elements of territorial property is that it is representative. Now, for illustration, suppose—which God forbid—there was no House of Commons, and any Englishman—I will take him from either end of the island—a Cumberland or a Cornish man, finds himself aggrieved. The Cumbrian says, 'This conduct I experience is most unjust. I know a Cumberland man in the House of Lords, the Earl of Carlisle or the Earl of Lonsdale; I will go to him; he will never see a Cumberland man ill-treated.' The Cornish man will say, 'I will go to the Lord of Port Eliot; his family have sacrificed themselves before this for the liberties of Englishmen, and he will get justice done me.'

But the charge against the House of Lords is that the dignities are hereditary, and we are told that if we have a House of Peers they should be peers for life. There are great authorities in favour of this, and even my noble friend near me [Lord Derby] the other day gave in his adhesion to a limited application of this principle. Now, in the first place let me observe that every peer is a peer

for life, as he cannot be a peer after his death; but some peers for life are succeeded in their dignities by their children. The question arises, who is most responsible—a peer for life whose dignities are not descendible, or a peer for life whose dignities are hereditary? Now, gentlemen, a peer for life is in a very strong position. He says, 'Here I am; I have got power and I will exercise it.' I have no doubt that, on the whole, a peer for life would exercise it for what he deemed was the public good. Let us hope that. But, after all, he might and could exercise it according to his own will. Nobody can call him to account; he is independent of everybody. But a peer for life whose dignities descend is in a very different position. He has every inducement to study public opinion, and, when he believes it just, to yield; because he naturally feels that if the order to which he belongs is in constant collision with public opinion, the chances are that his dignities will not descend to his posterity. . . .

Gentlemen, you will perhaps not be surprised that, having made some remarks upon the Monarchy and the House of Lords, I should say something respecting that House in which I have literally passed the greater part of my life and to which I am devotedly attached. It is not likely, therefore, that I should say anything to depreciate the legitimate position and influence of the House of Commons. It is said that the diminished power of the Throne and the assailed authority of the House of Lords are owing to the increased power of the House of Commons, and the new position which of late years, and especially during the last forty years, it has assumed in the English Constitution. The main power of the House of Commons depends upon its command over the public purse and its control of the public expenditure; and if that power is possessed by a party which has a large majority in the House of Commons, the influence of the House of Commons is proportionately increased, and, under some circumstances, becomes more predominant. But this power of the House of Commons is not a power which has been created by any Reform Act, from the days of

Lord Grey in 1832 to 1867. It is the power which the House of Commons has enjoyed for centuries—which it has frequently asserted and sometimes even tyrannically exercised. The House of Commons represents the constituencies of England, and I am here to show you that no addition to the elements of that constituency has placed the House of Commons in a different position with regard to the Throne and the House of Lords from that it has always constitutionally occupied.

We speak now on this subject with great advantage. We recently have had published authentic documents upon this matter which are highly instructive. We have, for example, just published the Census of Great Britain, and we are now in possession of the last registration of voters for the United Kingdom. It appears that by the census the population at this time is about 32,000,000. It is shown by the last registration that, after making the usual deductions for deaths, removals, double entries, and so on, the constituency of the United Kingdom may be placed at 2,200,000. So it at once appears that there are 30,000,000 people in this country who are as much represented by the House of Lords as by the House of Commons, and who, for the protection of their rights, must depend upon them and the majesty of the Throne. And now, gentlemen, I will tell you what was done by the last Reform Act.

Lord Grey, in his measure of 1832, which was no doubt a statesmanlike measure, committed a great and for a time it appeared an irretrievable error. By that measure he fortified the legitimate influence of the aristocracy; and accorded to the middle classes great and salutary franchises; but he not only made no provision for the representation of the working classes on the Constitution, but he absolutely abolished those ancient franchises which the working classes had peculiarly enjoyed and exercised from time immemorial. That was the origin of Chartism, and of that electoral uneasiness which existed in this country more or less for thirty years. The Liberal Party, I feel it my duty to say, had not acted fairly by this

question. In their adversity they held out hopes to the working classes, but when they had a strong Government they laughed their vows to scorn. In 1848 there was a French Revolution and a Republic was established. No one can have forgotten what the effect was in this country. I remember the day when not a woman would leave her house in London, and when cannon were planted on Westminster Bridge. When Lord Derby became Prime Minister, affairs had arrived at such a point that it was of the first moment that the question should be sincerely dealt with. He had to encounter great difficulties, but he accomplished his purpose with the support of a united party. And, gentlemen, what has been the result? A year ago there was another revolution in France, and a Republic was again established of the most menacing character. What happened in this country? You could not get half a dozen men to assemble in the street and grumble. Why? Because the people had got what they wanted. They were content and they were grateful.



MINISTRY'S REQUEST TO THE SOVEREIGN  
FOR THE CREATION OF PEERS

*LORD (afterwards Marquis) CURZON OF  
KEDLESTON*

*House of Lords, 8 August 1911*

(9 H. L. Deb., 5 s., 821 ff.)

[LORD CURZON moved a vote of censure on the Government, contending that the advice given to the King by the Asquith Ministry (whereby an assurance was obtained from the King that a sufficient number of peers would be created to enable the Parliament Bill to be passed) was 'a gross violation of Constitutional liberty'. Cf. Nos. 4 and 22.]

The full gravity of the situation was only revealed to us yesterday in the speech of the Prime Minister in the House of Commons. . . . It appeared from that speech that on November 15 last the Prime Minister, on behalf of the Government, submitted a Memorandum to the King and obtained his assent to the conditional creation of peers. Will your Lordships allow me, although you have no doubt read it, to repeat the words?

'His Majesty's Ministers cannot take the responsibility of advising a Dissolution unless they may understand that, in the event of the policy of the Government being approved by an adequate majority in the new House of Commons, His Majesty will be ready to exercise his constitutional powers, which may involve the Prerogative of creating peers, if needed, to secure that effect shall be given to the decision of the country. His Majesty's Ministers are fully alive to the importance of keeping the name of the King out of the sphere of Party and electoral controversy. They take upon themselves, as is their duty, the entire and exclusive responsibility for the policy which they will place before the electorate. His Majesty will doubtless agree that it would be inadvisable in

the interests of the State that any communication of the intention of the Crown should be made public unless and until the actual occasion should arise.'

Thus, my Lords, it is abundantly clear that on November 15 last His Majesty's Ministers did go to the King, before the situation had developed; before their Bill had passed its Second Reading in the House of Commons; before it had even been considered in the House of Lords; before they had any reasonable idea of what our attitude would be; before the Sovereign could possibly know in what form or over what difference the case for the ultimate exercise of the prerogative might arise; and that they did use their influence with His Majesty to place themselves in possession of the royal prerogative in circumstances of such a character that, to use their own words, 'the King had no alternative but to assent'. And, my Lords, having done this, these scrupulous guardians of the Constitution sat down and recorded their conviction, in the words which I have quoted, of the extreme importance of keeping the King out of the sphere of political controversy into which they had just successfully inveigled him and the inadvisability of making any statement upon the transactions to which I have referred. Once more I take off my hat to the strategy, or perhaps the better word would be tactics, of His Majesty's Government, but I cannot compliment them either upon their constitutionalism or upon their candour.

I should like to ask, although I cannot say that I expect a reply, Was it ever suggested to the Sovereign at those interviews that your Lordships might possibly accept the Second Reading of the Parliament Bill? Was it ever placed before him that the general election to which his assent was asked was going to be fought upon other issues than the issue of the Parliament Bill? Could he anticipate that the point of difference upon which peers might be demanded at a later date would be the question whether Home Rule should be passed without the assent of the people? Did he know that, when the creation of peers would be asked for, it might be a question not

merely of forty or fifty, but, to quote the Home Secretary, of 400 or 500? I venture to say that there is no parallel or precedent in the whole course of British history for the incidents to which I have referred. At least Lord Grey waited, before he went to King William IV and obtained his pledge, until his Bill had twice passed the House of Commons and had been rejected by the House of Lords. You could not wait for that. You obtained your blank cheque—I have had to use that familiar metaphor because there is no other which adequately describes it—before the Bill had been passed by the House of Commons at all and before it had even been seen by your Lordships' House. There is a phrase in one of the Letters of Junius to the Duke of Grafton in which he says:—

'You began by betraying the people; you ended by betraying the king.'

We do not in these days use the rather full-blooded language of the eighteenth century; but, my Lords, if any modern Junius were to arise and were to address His Majesty's Ministers at this moment and say to them:

'You inverted the process. You began by coercing the King; you ended by betraying the people,'

I, at any rate, should not quarrel with him either for his language or his sentiments.

It may be said, of course, that we were great simpletons to be taken in by these tactics, and that we ought to have guessed all the time what was going on. Last night the Prime Minister referred to two statements that he had made in the House of Commons—one on April 14 and the other on November 18, 1910—which he seemed to think ought to have let us into the secret at an early date. Perhaps in the light of knowledge which we did not then possess we ought to have read into those subtly chosen phrases the dark meaning which they were intended to conceal rather than to convey. But I own that we did not. At any rate I did not, and I do not think any of my noble friends sitting on this Bench did. Perhaps we were very stupid not to know what was in hand. But, my

Lords, the main reason why we failed to understand those sentences was that they had been preceded by another sentence from the same source which the meanest intelligence could not fail to understand. This was the language used by the Prime Minister on February 21, 1910:

'In my judgment it is the duty of statesmen and responsible politicians in this country, as long as possible and as far as possible, to keep the name of the Sovereign and the Prerogative of the Crown outside the domain of party politics. To ask in advance for a blank authority for an indefinite exercise of the Royal Prerogative with regard to a measure which has never been submitted to or approved by the House of Commons is a request which in my judgment no constitutional statesmen could properly make, and it is a concession which the Sovereign could not be expected to grant.'

Yet this was the very request which the same Minister was nine months later to address to his Sovereign, and this was the very concession which that Sovereign was to be compelled to make! My Lords, were we such simpletons when we interpreted the language of February in the way we did? Was it language which was susceptible of more than one interpretation? We were not justified in believing that the Prime Minister who used it could possibly be guilty of the act which he had himself described as unconstitutional, or would place upon the Sovereign the pressure he had himself condemned.

In view of these proceedings what a farce the general election and the subsequent proceedings in both Houses of Parliament now turn out to have been! When you (the Government) went to the general election I wonder how many of your speakers and supporters, when they were denouncing the hereditary principle amid the cheers of the crowd on popular platforms, knew all the while that you had a blank bit of paper in your pocket on which your Patronage Secretary was beginning to write the names of hundreds of hereditary peers whom for your own ends you were going to add to this House. You thundered against the iniquity of Conservative measures

being passed by a crowd of Conservative peers in the House of Lords, and all the while you were contemplating constructing a similar advantage for yourselves. And then when, the general election over, we all came back to our work, when the House of Commons for weeks discussed the Parliament Bill, and when we on our more modest scale in this House devoted two or three weeks to the consideration of the same measure, it now appears that the whole thing was a mockery and a farce! It was what Disraeli in his cynical language would have called 'an organised hypocrisy'. I can imagine every night as noble Lords opposite went home from the futile proceedings of this House, from our marchings and counter-marchings over a field which was not even a field of battle, they must have consoled themselves for the labours of the day by taking down from the wall and looking to the priming of the blunderbuss with which they were afterwards going to shoot us down.

The Prime Minister now asks us to believe that he held his hand during all this time and said nothing about the guarantees because he believed that we were going to accept his Bill. My Lords, if that is so, why was the Prime Minister so confident of our intention to reject it in November last, before the Bill had even reached us, that he must have a general election in order to put terror into our souls? What, I wonder, was the use of the prerogative if the Prime Minister really believed that we were going to accept his Bill without substantial amendment? Reviewing these proceedings, as I have attempted to do, I do not know which is worse—the injury that was done by Ministers to the Crown by the coercion of its independence, or to the Constitution by the destruction of its safeguards, or to the people by the deception which was practised at the people's expense. At any rate these debates in both Houses of Parliament have had this advantage. They have torn asunder the veil from these proceedings. They have revealed the whole transaction in its true light. They have enabled, or they will enable, history to pass its verdict upon a course of events that has

really been worse than revolution, because it has accomplished without physical violence what physical violence by itself would never have been allowed to effect.

Perhaps your Lordships will allow me to say a few words about the precedents upon which His Majesty's Government rely. I note with interest that not one word has been said, so far as I have seen, about the case of 1711—the only case in which the creation of peers was actually accomplished in order to carry the policy of the Government of the day. I think, if I may say so, that Ministers have been wise to give a wide berth to that illustration. For, as your Lordships know, it was a creation in the first place of twelve peers only, three of whom were eldest sons—a creation hardly to be compared with the generous addition to our ranks which is contemplated by the Home Secretary; it was a creation which was intended, not to carry a party measure, but to put an end to a long and desolating war; and yet, excellent as its intention was, it was so generally condemned that the authors of it were impeached, and the principal of them, Lord Bolingbroke, at a later date, in a letter which has been published, declared that his act was unprecedented and invidious, to be excused by nothing but the necessity and hardly by that. So much for the events of 1711.

I pass to the precedent of 1832, upon which, and upon which exclusively, I understand that Ministers rely. I am not going on this hot afternoon, and in a debate in which so many speakers wish to join, to recapitulate the history of that momentous time, which can be found in any constitutional history or text-book. I will only draw the conclusions to be derived from such a study. I venture to say it is impossible for any one to rise from a study of these proceedings without seeing that the difference between that case and this is so great that it vitiates any attempt to draw an analogy from one to the other. In the first place there is the notorious fact that the Reform Bill of 1832 was a measure which the great mass of the people earnestly desired. A fierce agitation had sprung up in all parts of the country, riots had

occurred in several of our principal cities, peers had been attacked, the country was really almost on the brink of civil war. I do not suppose that even the most heated of our opponents would contend that there is any such wave of feeling now. There certainly have been few signs of it on the part of noble Lords who sit opposite. Their enthusiasm for this Bill seems to be of a very tempered description. It has been singularly shy of expression, and has for the most part taken refuge in absence. It has needed an almost pathetic appeal on the part of the noble Viscount opposite to bring even his latest recruits on to the battle-field tomorrow; and, although I congratulate the noble Viscount on the relatively encouraging nature of the reply which he has received, I cannot help thinking that the attitude of his followers is due quite as much to a reluctance at the prospect of seeing the comfortable spaces of those Benches invaded by a number of their colleagues, less obviously deserving than themselves, as it is to a real devotion to the Bill.

Whether the attitude of noble Lords opposite really reflects the feeling of their supporters in the country I do not pretend to say. I am quite prepared to believe that it does not. I am quite ready to believe that already many of them have been so tainted with the atmosphere of this House that they are out of touch with the constituencies, and that their followers in the country are as warm about the Bill as they themselves are relatively cool. But, at any rate, you cannot deny this, that the forces against this Bill in the whole country are scarcely inferior, and in England are numerically superior to those which you can boast. And while Lord Grey received his powers for the creation of peers to carry a Bill which the overwhelming mass of the people desired, you are going to force a party measure upon political opponents who are nearly as numerous as yourselves. That is the first difference between the two situations. The second is this. Lord Grey did not go to King William IV for the creation of peers until the Reform Bill had three times passed its Second Reading and had twice passed its Third Reading in the

House of Commons, or before it had been defeated in the House of Lords. You sought and obtained your 'guarantees' in November before the Bill had passed its Second Reading in the House of Commons, before it had been introduced into this House, and at a later date you sought to put those powers into operation when three-fourths of the Bill—or one-half of the Bill, if you like—had been accepted by your Lordships here.

I call your Lordships' attention to a third difference to which I venture to attach the greatest importance. There was a stage in the proceedings of 1832 which is conspicuous by its absence on the present occasion. King William IV did not give his sanction to the creation of peers, after twice refusing it, until he had ascertained that the Opposition was not in a position to relieve him from the anxieties of the position or to form an alternative Government. I believe I am historically correct—the noble Viscount opposite will correct me if I am wrong—in saying that it was not only with the knowledge but at the instance of Lord Grey that King William IV sent for Lord Lyndhurst and the Duke of Wellington and discussed the situation with them. We all know the conditions which rendered it impossible, after ten days' discussion, for the Duke of Wellington to form a Government. But, at any rate, the discussion and the consultation took place. Now, I do not know whether the present Leader of the Opposition, if he had been similarly called into council, might have been able to do more than the Duke of Wellington did in 1832. I have no knowledge on that subject. But my point is this—that he never was so consulted, that he was kept in the dark, that he knew nothing of what was going on. Ministers—I speak only, of course, from such knowledge as I have from what appeared in the newspapers this morning—Ministers in November had taken the King and placed him, so to speak, under duress; they had taken him into captivity. They deprived the Sovereign of the opportunity open to every constitutional monarch under our system, and assuredly one which ought not to have been denied to the Sovereign in those trying conditions,



of hearing the two sides of the case and of receiving advice from those who, although they may not be members of the Government, are equally the guardians of the Constitution and the servants of the Crown.

There are many other differences between the two occasions upon which, if I had time, it would be easy to enlarge. But, obviously, no analogy can be drawn between the creation of forty or fifty peers, slightly modifying the total number and political complexion of this House, and the creation of 400 or 500 peers, swamping and destroying one of the two branches of the Legislature. There is no analogy between the creation of peers for a single measure complete in itself and a creation of peers intended to promote the enactment of an entire group of measures, the fatal and illegitimate offspring of the Parliament Bill. Above all, there is no analogy between the creation of peers for a measure to extend the rights and privileges of the people and a measure to rob them of a constitutional right which they have always hitherto enjoyed.

I see that the Prime Minister lays great stress upon the opinion of constitutional lawyers, and more particularly of Professor Dicey. I wish that any Minister before he quotes Professor Dicey would write to that learned man and ask how far the dictum which they quote applies to the present case. I think—indeed, I know—that Professor Dicey would reply, in the first place, that there is all the difference in the world between a single and homogeneous Government pressing a particular policy, and the case of a coalition making a bargain with separate factions for carrying measures which all do not equally or wholly approve. And, secondly, he would say that, while the creation of peers may conceivably be justified in the last resort to carry a definite measure unmistakably sanctioned and desired by the people, there is no justification or excuse for obtaining beforehand an indefinite authority to create peers to support the general policy of a Government.

But I should like to quote an authority to which I

think your Lordships will be inclined to attach greater weight than to the dicta of the most learned jurist—the authority of the great statesmen in the past, whose lives have been spent in the service of Parliament and whose wisdom and character and eloquence have been used to guide the councils of their Sovereign and to shape the destinies of the State. In 1856 there was a famous debate in this House—it was, indeed, a combat of giants—on the case of the Wensleydale Peerage. In that debate there participated not only illustrious veterans such as Lord Lyndhurst and Lord Brougham, themselves the survivors of the Reform era—and there are still in your Lordships' House three members who, I believe, heard that debate—but there also spoke in it Lord Derby, Lord Campbell, Lord Cranworth, Lord Granville, and the Duke of Argyll. The most remarkable feature of that remarkable debate was the almost prophetic unanimity with which the whole of those noble Lords anticipated the danger of a great creation of peers in the future, and condemned, by anticipation, the course which their less scrupulous successors have pursued. I wish those of your Lordships who are interested in the matter would take the trouble to read that debate. I have not the time, of course, to make more than a passing reference to it, and I will only trouble your Lordships with two short extracts from the speeches of two of those eminent men. Lord Lyndhurst said:—

'It does not follow that this or any other exercise of the Prerogative, merely because it is strictly legal, is therefore consistent with the principles of the Constitution. The Sovereign may, by his Prerogative, if it should be thought proper, create 100 Peers with descendible qualities in the course of a single day, and this would be strictly legal; but everybody must feel and know that such an exercise of the Prerogative of the Crown would be a flagrant violation of the principles of the Constitution.'

The second quotation is from Lord Granville:—

'Such a case as that of 1832 happily does not occur once in a century, or once in two centuries—'

He little knew what was to come—

'but I believe, whenever it should occur, any Ministers would be alarmed at the idea of making use of the Crown's Prerogative in such a way.'

Then he discussed the idea that had been mooted of creating forty peers for the measure in question, and he said—

'Your Lordships must feel that to make forty Peers is as unfeasible as it would be unconstitutional.'

Before I leave the famous men of the past may I refer for one moment to an example which is familiar to the noble Viscount, Lord Morley, because he has himself explained and commented upon it in his book—I mean the example of Mr. Gladstone? In 1884, when there was a great controversy between the two Houses of Parliament about the franchise, a controversy which was ultimately closed by the wisdom and moderation of the leaders on both sides, assisted by the sagacious counsels and the immense experience of Queen Victoria, Mr. Gladstone placed on record in a Memorandum to the Queen that he had declined to consider the alternative of the creation of peers or of making an organic change in the House of Lords. I hope I have said enough to show, therefore, that neither in history, nor in the constitutional writer who has been principally quoted, nor among the eminent statesmen of the past can any justification be found for the course which His Majesty's Government have pursued. They have indeed cut themselves adrift from all experience and all authority. They have created an entirely new precedent of their own. They have started a revolution of which no man can see the end, and it is for this, I think, that they deserve the censure of this House, and later on will receive the judgment of posterity.

MINISTRY'S REQUEST TO THE SOVEREIGN  
FOR THE CREATION OF PEERS

VISCOUNT HALDANE

*House of Lords, 8 August 1911*

(9 *H.L. Deb.*, 5 s., 849 ff.)

[See note on No. 9. Lord Haldane spoke in defence of the Asquith Ministry, of which he was a member.]

I wish to try to strip this question of some of the rhetoric in which it has been involved and which seems to me to be largely irrelevant. What is the position? The quarrel arose between the two Houses long ago and has been becoming more and more acute, until it became very acute in 1906, and the result was that in 1907 a Resolution was carried by a large majority, nearly 300, in the House of Commons asserting the principle which is embodied in this Bill. The next cause of quarrel was when your Lordships rejected the Budget by a large majority. That was met by a counter-resolution, also carried by an enormous majority in the House of Commons, condemning your Lordships' action. Then the question came to a general election, and a large majority of the country pronounced for the Budget and also for the principle of what is called the restricted Veto. Then there was a long debate, and the Resolutions which were embodied in this Bill were again passed by a large majority in the House of Commons; and then at a general election there was a further pronouncement of the electors. Even those on the other side who take most strongly the view that the proposals of the Government are not justified do not profess to desire an appeal to the country. It is common ground that an appeal to the country would not be likely to result in a change of opinion on this subject.

How do we stand in this state of things? Two alternatives seem to me to be the only possible ones. I rule

out as inconceivable the proposition that, assuming it to be the deliberate intention of the House of Commons after two elections to pass a certain measure, your Lordships should offer a permanent opposition to it—I rule out as inconceivable a situation in which that should be left without a remedy.

If that is so, there were two ways only of dealing with the problem. One was for Ministers to resign and leave the Sovereign to choose other Ministers, who would go to the country. That would be a very proper and natural course under certain circumstances; but it was neither a proper nor natural course in the circumstances which occurred here. We were desirous throughout to keep the Crown out of this controversy. There is a great deal of confusion about the position of the Crown in this matter. The Crown is not a mere piece of machinery. The Crown is a very important element in the Constitution; but the Crown always acts upon the advice of Ministers, and always will so act as long as our Constitution remains what it is. If that be so, the Crown must have Ministers who have a reasonable chance of possessing the confidence of the country, and, if the Crown has Ministers who could not hold their office for a week and who, if they went to the country, would be defeated—it is not advisable that the Crown should be placed in that position.

The other alternative was the alternative which has actually been adopted. It was to tender advice to the Crown, and that advice was tendered only on the footing that there was to be a reference to the country and a reference in the only constitutional way. That reference was taken, and the response was emphatic—the majority was undiminished. It is no answer to say it was a coalition. It was a coalition of men holding divergent opinions on various subjects, but unanimous upon one point, and that point is the Parliament Bill. These were the facts which we had to face. . . .

Lord Curzon referred to Professor Dickey. I, for one, am not likely to be wanting in respect for Professor Dickey.

He is a personal friend of my own. But I am not concerned with Professor Dicey's political convictions. What I am concerned with is his opinion as a distinguished jurist on the large question of principle which he has discussed in his book quite apart from all current policies, and it is because he has laid down that principle that we turn to his book as a book of authority.

Lord Curzon also referred to what occurred in 1711 and again in 1832. To discuss what particular shades of opinion there were between this statesman and that, and what the controversy was at the time and how the circumstances have differed in minute details from the present situation, is not a very profitable course to pursue. What is a great deal to the point was that in 1711 it was admitted that there was this remedy for a breakdown in the Constitution, and that doctrine became even more definitely expressed in 1832. Does anybody imagine that between 1832 and now that doctrine has not got still more authority than it had in those days? Why, our Constitution is not rigid, and does not stand still. It is unwritten, it is evolving itself in the direction of making the basis of government more and more a popular basis; and, that being so, I maintain that the value of the precedent of 1711 and 1832 is simply to show that there is in our Constitution a principle which has grown more powerful still—so powerful that I think no sane or rational Minister would have given any other advice to the Sovereign than that which was given by His Majesty's present Ministers.

Really, the question is a very simple one. Your Lordships have been jousting with the House of Commons, and it is a serious matter to joust with the House of Commons; and when a trial of strength has arisen with the House of Commons, with the country behind it, there are those who think that the House of Commons ought to prevail. If that is so, there is in this Constitution a remedy for the situation which has arisen, and that remedy, in the circumstances which are actually current, is a remedy which is proper to be applied.

What my noble friend Lord Crewe said to-day, coming after the documents which the Prime Minister laid before the country yesterday, shows that the advice which was given was not advice directed to some state of things which was to be crystallised irrespective of what might happen hereafter, but advice directed to this, that it might prove necessary to obtain a creation of peers, in which case advice would be given to the Sovereign that the creation should take place.

It is not to the point to say that the matter appears to have been entered upon long before these discussions took place. Why, last year the Resolutions, the very substance of the Bill, were discussed in the House of Commons with a bitterness and a rancour which gave us a most lively anticipation of what would happen when they were crystallised into a Bill. We knew what we had to expect. We knew the position we should have to meet at the hands of a majority in this House, and under the circumstances there was no course open except the course which the Government have taken, unless we were to find ourselves in the humiliating position of acknowledging that the Constitution had broken down and that there was no remedy for the situation in which we were left.

# THE SOVEREIGN AND THE MINISTRY'S RIGHT TO DISSOLUTION OF PARLIAMENT

HERBERT HENRY ASQUITH

(afterwards Earl of Oxford and Asquith)

Speech to Liberal M.P.s, 18 December 1923

(The Times, 19 December 1923)

[AFTER the defeat of the Baldwin Ministry in the general election of 1923, the question was raised whether the impending Labour Ministry would be entitled to claim a dissolution of Parliament in any circumstances they might select, although without a majority, as a party, in the House of Commons. Asquith lost no time in expressing his weighty views on the subject. Cf. Nos. 5, 18, and 19.]

I am not going this afternoon to analyse figures; I will only say that, through the accidents and anomalies of our imperfect electoral methods, Liberalism has a substantially smaller and Labour a substantially larger share of representation in the new House of Commons than either could have obtained under a rational and really democratic system. But let us face the facts as they are, and not as they ought to be, and let us survey for a moment their outstanding features.

There were three competing policies offered to the electorate. There was the Tory programme, there was the Labour programme, and there was the programme put forward by Mr. Lloyd George and myself. What was the main plank of the Tory platform? Protection. What was the main plank of the Labour platform? The capital levy, with its Socialist adjuncts and accessories. Both have been rejected and repudiated with overwhelming emphasis. If either of them were submitted, when Parliament meets, to a free vote of the new House of Commons, it would be defeated in each case, I am putting



it moderately when I say, by a majority of more than 200.

Let us face the facts of the situation, because, although in that House we are in a numerical inferiority to both our competitors, I am saying what every one knows to be true, not only in this room, but outside and throughout the country, that neither of them, neither the Tories nor the Labour Party, has a chance of retaining or obtaining office unless it abandons for the time being the principal position which it fought the election to obtain. Are we not, then, entitled to say that our policy is the only one which the electorate has not only decisively, but derisively, not rejected? From which it follows that, whoever may be for the time being the incumbents of office, it is we, if we understand our business, who really control the situation.

The days of the present Government are numbered. They will go, and they will go with short shrift. I know nothing, except what I read in the newspapers, of the plans and intentions of the Labour Party. It seems to be generally assumed that, as the second largest party in the House of Commons, though they number less than one-third of its members, they will be ready to assume the responsibilities of Government. This may reassure some trembling minds outside—if a Labour Government is ever to be tried in this country, as it will be, sooner or later, it could hardly be tried under safer conditions.

And now let me say here, by way of parenthesis, there seems to be a good deal of confusion in the public mind on the subject of the power of dissolution. I may claim to speak, I won't say with authority, but with some experience on this matter, for I am the only person now living who has felt it his duty to advise the Crown to dissolve Parliament twice in a single year—the year 1910.

What were the circumstances? No one remembers it better than Mr. Lloyd George, because he was really the provocative cause. We were faced with a deadlock in the two Houses. The House of Lords had rejected our Budget. Not only so, but mutilated all our principal

Bills. We appealed to the country at the beginning of the year, and the first election—the election of January—gave us a substantial working majority. Observe that! During the next few months we seized the opportunity of the accession of a new Sovereign to endeavour to come to an agreed settlement by a constitutional conference. The conference broke down, and the final issue had to be faced. It was clear to all of us that it might ultimately involve a request to the Crown to exercise its prerogative by a large creation of peers. My colleagues and I thought that, before that phase was reached, we ought to be fortified. Although our position in the then House of Commons was absolutely impregnable, we thought we ought to be fortified by a fresh expression of the judgment of the nation. It was for that reason, and that reason only, we advised the second dissolution in December.

I need hardly tell you there is absolutely no analogy between that case and the circumstances of the present time.

The dissolution of Parliament is in this country one of the prerogatives of the Crown. It is not a mere feudal survival, but it is part, and I think a useful part, of our constitutional system, for which there is no counterpart in any other country, such, for instance, as the United States of America. It does not mean that the Crown should act arbitrarily and without the advice of responsible Ministers, but it does mean that the Crown is not bound to take the advice of a particular Minister to put its subjects to the tumult and turmoil of a series of general elections so long as it can find other Ministers who are prepared to give it a trial. The notion that a Minister—a Minister who cannot command a majority in the House of Commons, but who is in a minority of 31 per cent.—the notion that a Minister in those circumstances is invested with the right to demand a dissolution is as subversive of constitutional usage as it would, in my opinion, be pernicious to the general and paramount interests of the nation at large. . . .

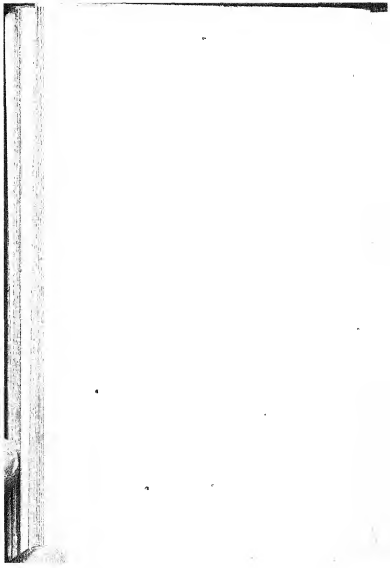
What is immediately before us? The Government

having resolved to retain office when the new Parliament meets, their first act must be, by the machinery of the Address, to endeavour to extract an expression of confidence from the House of Commons. The result of that experiment is, as I have already said, a foregone conclusion. And why? Their record is an almost unbroken one of impotence and humiliation. At one of the most critical times in all history for the future of Europe, they have allowed a whole year to be wasted, and worse than wasted, and have reduced this country to a cipher in the Council Chamber of the world. For my part—as you know, I am not in the habit of using very exaggerated language—I tell you plainly I will not move a finger to continue or to connive at a prolongation of their disastrous stewardship of national and international affairs.

Finally, let me carry you above and beyond the merely polemical and strategical issues of party strife. The situation is without example. The King's Government must be carried on here at home. The authority of Great Britain must, so far as that is possible—and the difficulties have been enormously exaggerated by the election—be restored abroad. We of the Liberal Party—and I hope I speak your opinion—should do nothing wantonly to hamper or obstruct either the one process or the other. We have no intention to indulge in a temper of petulance or vindictiveness, or to resort to the weapons of faction. We are, and we ought to be, penetrated with the sense of responsibility engendered by the long and large traditions which are the most precious inheritance of a great and historic party. We shall do our best by every legitimate means to give effect in Parliament to the principles and policy which we laid before the electors. We are not going to become a wing or adjunct of any other party. Therefore, as the first condition of our usefulness, we shall I hope cherish, and shall not for a moment compromise or imperil in any direction—I say deliberately, in any direction—our unfettered freedom and our unconditional independence.

II  
THE MINISTRY  
RELATIONS WITH PARLIAMENT AND  
PEOPLE





THE POSITION OF A MINISTRY NOT SUPPORTED  
BY THE HOUSE OF COMMONS

WILLIAM PITT

*House of Commons, 1 March 1784*

(24 Parl. Hist., 709 ff.)

[THE newly appointed Prime Minister, who had more than once been defeated in the House of Commons on motions tantamount to lack of confidence, defended his Ministry against a motion, by Charles James Fox, for an Address to the King to remove his Ministers. Pitt's attitude appears in some respects to be retrograde; but the circumstances of his appointment were peculiar; and his seeming disregard for the constitutional position of the House of Commons is explained by his belief that the House did not represent the views of the People.]

No man is more zealous or more unreserved in admitting and asserting the right of the House to advise the Sovereign in the exercise of all his prerogatives than I am: this has always been a sentiment which I have avowed: but that a declaration on the part of the House of their disapprobation of His Majesty's Ministers should, *ipso facto*, in any given instance, bind and compel the Sovereign to dismiss those Ministers, or oblige them to resign, is a point which I never have admitted, and will never allow. Such a sentiment of disapprobation surely places Ministers in awkward and unpleasant situations; but that it should force them to retire, I maintain, is an unconstitutional doctrine, hostile to the prerogative of the Crown, and to that balance of power on which the excellency of our government depends. This is a point, therefore, which I am always ready to maintain, and from supporting which I hope I shall never be precluded by any false theories, or vague declamation, respecting the dignity

of the House. . . . But, though I am thus the opponent of all capricious decision on the appointment of Ministers, I am as unfriendly to their continuance in office when disapproved of by the House of Commons on proper grounds, as by either branch of the Legislature. On this account I call on the House to specify charges against administration, to prove those charges, and not capriciously to condemn an Administration which has never as yet been found guilty, and has in fact, by an unaccountable obstinacy and untowardness of circumstances, been deprived of an opportunity of displaying its prudence and its zeal in the service of the public. When these accusations are proved, when these charges are substantiated, it will then be proper for Ministers to resign; and, if in such a case I shall afterwards continue in office, I will suffer myself to be stigmatized as the champion of prerogative, and the unconstitutional supporter of the usurpations of the Crown. But till this period arrives, I shall reckon it my duty to adhere to the principles of the Constitution, as delivered to us by our ancestors; to defend them against innovation and encroachment, and to maintain them with firmness.

Attempts have been made to fix imputations of criminality on the present Administration. Their sins have been stated; and one of the most glaring of them is, that the late Ministry were dismissed against the sense of the House. But what is the meaning of this charge? To what conclusion does the argument, when followed up, lead? Does it not fairly admit of this comment, that it is improper for His Majesty to dismiss his Ministers, provided they are approved of by the House of Commons; and that so long as they act agreeably to its sentiment, so long, and no longer are they to enjoy the patronage of the Crown, and retain the offices of administration? Is this a decent treatment of the prerogative? Is this constitutional doctrine? Is it not degrading the dignity of the Sovereign? Is it not a transference of the prerogatives of the Crown to the House of Commons, and a placing the royal sceptre under the mace that lies upon the table?

The Constitution of this country is its glory; but in what a nice adjustment does its excellence consist! Equally free from the distractions of democracy, and the tyranny of monarchy, its happiness is to be found in its mixture of parts. It was this mixed government which the prudence of our ancestors devised, and which it will be our wisdom inviolably to support. They experienced all the vicissitudes and distractions of a republic. They felt all the vassalage and despotism of a simple monarchy. They abandoned both, and by blending each together, extracted a system which has been the envy and admiration of the world. It is this scheme of government which constitutes the pride of Englishmen, and which they can never relinquish but with their lives. This system, however, it is the intention of the present Address to defeat and destroy. It is the intention of this Address to arrogate a power which does not belong to the House of Commons—to place a negative on the exercise of the prerogative and to destroy the balance of power in the Government as it was settled at the Revolution.



THE POSITION OF A MINISTRY NOT SUPPORTED  
BY THE HOUSE OF COMMONS

SIR ROBERT PEEL

*House of Commons, 8 April 1835*

(27 *Parl. Deb.*, 3 s., 980 ff.)

[SEE note on No. 5. At the end of 1834 William IV, to all intents, dismissed the Melbourne Ministry. Peel had for some weeks been trying to sustain the King in the difficult situation in which he had placed himself by reason of his unconstitutional intervention in politics. As Prime Minister, Peel, who had not had a working majority for his Ministry since the general election a few weeks earlier, was defeated in divisions in the House of Commons in such circumstances that he felt bound to resign. In doing so, he expressly admitted the principle that, besides the support of the Sovereign, a Ministry must have the support of the House of Commons. Cf. Nos. 14 to 16.]

It is my intention to move that the Mutiny Bill shall be read a third time, and in making that motion I wish to avail myself of the opportunity which it affords me of notifying to the House that I, in conjunction with all my colleagues in His Majesty's Government and in conformity with their unanimous opinion, have felt it incumbent upon us, upon a combined consideration of the vote to which the House of Commons came last night, and of our position as a Government in this House, to signify to His Majesty that we feel it our duty to place the offices which we hold at the disposal of the King. I do not hesitate to say that we have taken this course with the utmost reluctance, and not without the deepest conviction of its necessity. We feel that, being in possession of the entire confidence of the King, and having received from His Majesty the most cordial and unremitting support, looking to the present position of public affairs, to the present

state of political parties, looking to the strength, not only the numerical, but the moral strength of that great party by which we have had the honour of being supported; we felt it was our duty under existing circumstances to continue the attempt of administering public affairs, as the responsible advisers of the Crown, to the latest moment that was consistent with the interests of the public service, and with the honour and character of public men.

When I did not hesitate to avow the reluctance with which we had tendered our resignation, I believed I should have credit with a great majority of the House of Commons, that that reluctance arose from public considerations alone, and was wholly unconnected with everything of a personal nature. I have a strong impression that, when a public man at a crisis of great importance undertakes the public trust of administering the affairs of this country, he incurs an obligation to persevere in the administration of those affairs as long as it is possible for him to do so consistently with his honour. No indifference to public life, no disgust with the labours which it imposes, no personal mortifications, no deference to private feeling, can sanction a public man in withdrawing, on light grounds, from the post in which the confidence of his sovereign has placed him. But at the same time there is an evil in exhibiting to the country a want, on the part of the Government, of that support in the House of Commons, which can enable it satisfactorily to conduct the public affairs, which can enable it to exercise a control over the proceedings of the House—a legitimate and necessary control, conferred upon it by the possession of confidence. There is an evil in such an exhibition of weakness to which limits must be placed; and I must say, reviewing all that has occurred since the commencement of the present session—looking to the little progress the Government has been able to make in the public business of the country—looking at what has occurred on each of the last four nights—to the fact that Ministers have had the misfortune, on each of four successive nights, to be

left in a minority—on Thursday last, on Friday last, on Monday last, and last night; considering that that minority was smaller in relation to the majority than the minorities in which we have been at the commencement of the session;—adverting also to the fact that we have received the support of those who, not having a general and unlimited confidence in the Government, yet have given to the Government a cordial and honourable support on every occasion on which it was consistent with their public principles to give it;—adverting to all these considerations, I must say that, in my opinion, the time is come when it is incumbent on the Ministers of the Crown to withdraw from the responsibility which office, under such circumstances, imposes upon them.

In addition to these considerations are the nature and consequences of the vote of last night. That vote, I conceive, implied a want of confidence in His Majesty's Government, because, in my opinion, it was not necessary, for any public purpose, to come to that vote. It is tantamount to a declaration on the part of the House that it has not that confidence in His Majesty's Government which entitles that Government to submit to the consideration of the House the measures of which they have given notice. The noble Lord [Lord John Russell] has signified his intention, if the vote to which the House came last night does not lead to the result to which it has now led, to follow it up with an address to the Crown, conveying to His Majesty the resolution respecting the Irish Church, which the House has affirmed. As I conceive that embarrassment to the public interests would arise from the presentation of that address; and as I have no right to assume that the House will take a different view with respect to the policy of that address, different from the view which it has taken with respect to the resolution, it does appear to me and to my colleagues (whose views are in exact conformity with my own) that a public duty is imposed upon them, particularly since they feel that the time is fast approaching when resignation is inevitable, not to persevere in a fruitless struggle, which

may involve His Majesty, public men, and the country, in additional and unnecessary embarrassment. . . .

I have been anxious to give this explanation as briefly as I can, and in a manner the least calculated to give offence, or to excite angry feelings. For myself, the whole of my political life has been spent in the House of Commons, the remainder of it will be spent in the House of Commons; and, whatever may be the conflict of parties, I, for one, shall always wish, whether in a majority or in a minority, to stand well with the House of Commons. Under no circumstances whatever, under the pressure of no difficulties, under the influence of no temptation, will I ever advise the Crown to resign that great source of moral strength which consists in a strict adherence to the practice, to the principles, to the spirit, to the letter of the Constitution. I am confident that in that adherence will be found the surest safeguard against any impending danger, and it is because I entertain this belief that I, in conformity with the opinions of my colleagues, consider that the Government ought not to persist in carrying on public affairs after the sense of the House has been fully and deliberately expressed, in opposition to the decided opinion of a majority of the House of Commons. It is because I have that conviction deeply rooted in my mind, that regretting, as I most deeply do regret, the necessity which has compelled me to abandon His Majesty's service at the present moment; yet, upon the balance of public considerations, I feel that the course which I have now taken is more likely to sustain the character of public men and to promote the permanent interests of the country than if I longer persevered in what I believe will prove a fruitless attempt to conduct as a Minister the King's service in defiance of that opposition which has hitherto obstructed the satisfactory progress of public business.

THE POSITION OF A MINISTRY NOT SUPPORTED  
BY THE HOUSE OF COMMONS

SIR ROBERT PEEL

*House of Commons, 27 May 1841*

(58 *Parl. Deb.*, 3 s., 803 ff.)

[AFTER the Melbourne Ministry had displayed an inability to secure assent in the House of Commons for some of its measures, Peel moved a vote of non-confidence in the Ministry. His speech, and those of Macaulay and Russell (Nos. 15 and 16), show that the relations of the Ministry and Parliament were only in the process of reaching their modern development. After a long debate the motion was carried by one vote, and a general election followed.]

The Resolution which I mean to propose affirms two propositions—first, that Her Majesty's Government do not sufficiently possess the confidence of the House of Commons to enable them to carry through the House measures which they deem of essential importance to the public welfare; and secondly, that their continuance in office under such circumstances, is at variance with the spirit of the Constitution. My duty is to establish those propositions, and, if I establish them, I shall have a fair right to claim the assent of the House to the Resolution which I am about to move. With respect to my first proposition, that 'Ministers do not sufficiently possess the confidence of the House of Commons to enable them to carry through the House measures which they deem of essential importance to the public welfare', it is unnecessary for me to offer any detailed proof of its truth. Will any man affirm, after the experience, not of one or two nights, but after a long and continuous experience—will any man affirm that Ministers possess so much of the confidence of the House of Commons as to enable them

to carry measures which they deem of essential importance to the public welfare? . . .

If that proposition be true—if Her Majesty's Ministers do not possess the confidence of the House of Commons, then, I say, that their continuance in office is at variance with the principle and spirit of the Constitution. I presume I shall hardly be asked to define what I mean by the 'spirit of the Constitution'. I do not speak of those theories which refer to some combination of the opposing elements of monarchy, aristocracy, and democracy, each armed with defensive and offensive instruments, by which they keep each other in check. I speak only of that system of parliamentary government which has prevailed in this country since the accession of the House of Hanover. I speak of that system which implies that the Ministers of the Crown shall have the confidence of the House of Commons. I speak of that system which has prevailed during the period when, according to the expression—the just expression of the noble Lord, whom I now see opposite to me, in his able and dispassionate essay on the English Constitution, 'the centre of gravity of the State has been placed in the House of Commons'. When I use the phrase, 'spirit of the Constitution', I speak of the system of government which has maintained the equilibrium between monarchy and democracy—of that system of government which has harmonised those apparently conflicting elements—of that system of government which, by the constant yet almost unfelt interposition of slight checks, has prevented the necessity of recurring to the use of extreme instruments in the collision of antagonist powers. That is the spirit of the Constitution of which I speak, and that spirit of the Constitution appears to me to be violated by the continuance in office of Ministers who have not the confidence of the House of Commons.

My impression on that subject is confirmed by a reference to all historical precedents having analogy to this case. It is confirmed by the authority of all eminent writers, all statesmen versed in the practical administration of affairs. But my impression also receives melancholy

confirmation from the actual experience of positive evils which arise when another system of government is substituted for that which has hitherto prevailed. It is confirmed, likewise, by the course of historical precedent. I look to the period which all constitutional writers have referred to as the period from which dates the necessary system of parliamentary government, to the accession of the House of Hanover, to the appointment of Sir Robert Walpole as Prime Minister, and I say that, recurring to the history of Administrations, we find that invariably, or at least with scarcely an exception, a Minister, whatever might have been his power, however confirmed his influence, however long the duration of his authority, when deprived of the confidence of the House of Commons, has felt it incumbent upon him to do homage to the principle of representative government, and to abdicate his functions as Minister of the Crown.

I begin with Sir Robert Walpole. He held office for, I think, the long period of twenty-five years. If I mistake not, he was appointed in 1715, and the termination of his power took place about 100 years from the period at which I am now speaking, namely, in 1741. Sir R. Walpole was dispossessed of power under these circumstances: A motion was made by Mr. Pulteney, which implied the withdrawal of the confidence of the House of Commons. That motion was negatived in favour of Ministers by a majority of three; but upon Sir R. Walpole being in a minority on the Chippenham election (the determination of election questions was then exclusively influenced by party spirit, and they were looked upon as convenient modes of testing the strength of Ministries), notwithstanding the slight majority which he had on the question of confidence, Sir R. Walpole relinquished office, after having been Minister for twenty-five years. In 1782 Lord North yielded to the same influence. In that year two motions were submitted to the House of Commons. The first was brought forward by Sir John Rouse, and the second by Lord George Cavendish. One motion declared that it was impossible for the House to place confidence

in the Government, and the other was couched in terms very nearly similar. One was negatived by a majority of nine, the other by a majority of ten; but Lord North, nevertheless, yielded to the necessity implied by the withdrawal of the confidence of the House of Commons; and his authority also came to an end. In 1804, Lord Sidmouth retired from office, although he had in his favour a majority which has been almost unknown in the recent history of parliamentary contests. Lord Sidmouth in the course of his Administration, frequently had majorities to a great extent, but they having been reduced to, I think, thirty-seven, his Lordship felt it his duty to retire. He considered a majority of only thirty-seven as indicative of the withdrawal of the confidence of the House of Commons. In 1812, on the first formation of Lord Liverpool's Government, the House of Commons, on the motion of Lord Wharncliffe (then Mr. Stuart Wortley), by a majority of four agreed to a resolution expressing an opinion that a more efficient administration ought to be formed. That majority of four was decisive of the fate of the first Administration attempted to be formed by Lord Liverpool. He and his colleagues resigned their trust into the hands of the Sovereign, and it was not until attempts which proved ineffectual had been made to form another Administration, that Lord Liverpool was again placed in office. The next Administration which yielded to the influence of public opinion, as expressed by the House of Commons, was that which was presided over by my noble Friend the Duke of Wellington. In 1830,\* on the meeting of Parliament upon the question whether or not the Civil-list should be referred to a Committee of the House of Commons, we were defeated by a combination of parties entertaining opposite opinions, and the House of Commons resolved by a majority of, I think, twenty-nine, to refer the consideration of the Civil-list to a Select Committee. I felt that the minority in which the Government had been left was decisive of its fate.\* I thought it sufficiently significant of the fact that we had not the confidence of the House of Commons; and therefore the



Duke of Wellington and myself felt it our duty to retire from office. . . .

The next Administration which also yielded to public opinion, as signified by that of the House of Commons, was that over which I myself presided for a short time in 1835. I did carry on, for a short time, an unequal contest in opposition to the power leagued against me; but this I must say, that the first time I was positively obstructed in an act of legislation, that moment I felt it my duty to withdraw from the management of public affairs. . . .

In speaking of Administrations which have yielded to the authority of the House of Commons, I have omitted to mention a case in which the precedent appears at first sight to be somewhat different. I mean in 1783, when Mr. Pitt, notwithstanding the adverse votes of the House of Commons, remained in office, and continued to hold office, until he could take the sense of the people by a dissolution. But I contend that the circumstances of that case were in no degree analogous to the present. . . .

It may appear to a superficial observer, that it is a proof of the strength of the prerogative of the Crown, that it should be able to support its Ministers without a majority of the House of Commons. But that is an imperfect and mistaken view. The interests of the Crown and the interests of the House of Commons are identical. You cannot strike a blow at the House of Commons in its just and legitimate authority, without, at the same time, striking a blow at the monarchy of this country. But can it be said to add to the authority of the monarchy, that its Ministers and representatives, who counsel measures in this House, on the authority of the Crown—can it be supposed that the sorry triumph of being maintained in power by the Crown is a compensation for the delays, for the spectacle of insufficiency and want of authority in the Government we have recently beheld?

It may be said, 'True, we may not have the confidence of the House of Commons, but, perhaps, as Mr. Pitt was able to say, though Mr. Fox denied it, if we fail in the

House of Commons, there are sufficient indications that we possess the confidence of the country.' First, however, I should say with Mr. Fox, it is dangerous to admit any other recognised organ of public opinion than the House of Commons. It is dangerous to set up the implied or supposed opinions of constituencies against their declared and authorized organ, the House of Commons. The House and the constituencies should not be brought into this unseemly contest.

But if you deny the force of that argument—if you hold that it is right to refer to the opinions of the constituencies—can you, I ask, show me, in the elections that have recently taken place, any just ground for the boast that the confidence withheld from you by the House has been extended to you by the constituencies of the Empire? I know not exactly how many vacancies have occurred since the commencement of the present Parliament; I believe them to have been upwards of one hundred, but this I can say with confidence, that upon the general balance there have been twenty elections in which there have been changes of the former members, and of those twenty, embracing large towns, boroughs, agricultural districts, in fact, every kind and description of constituency, out of those twenty in which changes have taken place, sixteen have been averse to you, and four only have been in your favour. So that upon the whole in those places where changes have taken place during the present Parliament there has been a positive loss of not less than twelve members. I say, then, whatever may be the object you expect from an appeal to the people, if that be the course you are meditating, you have no right to say from the result of the elections hitherto, that the opinion of the constituencies differs from that of their representatives.

I know it will be said, that all my general doctrines may be true—that it is right under ordinary circumstances, that Ministers should have the confidence of the House of Commons; 'but there are special and peculiar circumstances', Her Majesty's Ministers might say, 'that except us from the ordinary rule, and entitle us to continue in

office.' Now, it is perfectly obvious that this plea will apply in fact to all times. Who can deny, that in the important position of this country, with such complicated affairs to be administered, there must be at all times special and peculiar circumstances connected with the Executive Government of the day, and that you (the Government), being the judges, will be enabled to discover special and peculiar circumstances, why you should be exempted from the ordinary principle, so that, in fact, there will be no limit to the application of that principle? The men who have to determine are not quite impartial judges as to the urgency of the circumstances which constitute the special case. Perhaps, however, it may be said that you contemplate an appeal to the people, and that you are holding office for the purpose of making that appeal. I know nothing whatever upon that subject. As a Member of the House of Commons, I can have no evidence of the intentions of the Crown. But I see you repeatedly in minorities; I see indications that you have not the confidence of this House. I know that you have power, at any time, to dissolve—I know, too, that you can choose the most favourable time for a dissolution. No doubt that is the prerogative of the Crown, a prerogative of a delicate nature for the House of Commons to meddle with. But all this does not relieve me from the performance of what I conceive to be a duty in calling upon the House of Commons to say, if Her Majesty's Government possess their confidence or not. And here, too, I will say, that I shall have no additional confidence if, after exciting the public mind upon such a subject as the sustenance of the people, you then make your appeal to the country by a dissolution.

THE POSITION OF A MINISTRY NOT SUPPORTED  
BY THE HOUSE OF COMMONS

THOMAS BABINGTON MACAULAY

(afterwards Lord Macaulay)

*House of Commons, 27 May 1841*

(58 *Parl. Deb.*, 3 s., 881 ff.)

[SEE note on No. 14.]

It is the first duty of the Ministers of the Crown to administer the existing law. If the House of Commons does not place sufficient confidence in the Government for this purpose, it may express its opinion, either indirectly by the rejection of all the propositions of the Administration, or directly, as was the case in the instance alluded to by the right hon. Baronet [Sir Robert Peel], Sir Robert Walpole. The proceedings in either case sufficiently mark the want of confidence of the House of Commons in the Government. Under such circumstances there is only the one or the other constitutional course to pursue—namely, either to retire from office, or to dissolve the Parliament. I deny, however, that it can be called a want of confidence, if the House withholds its assent from any new legislative measure, or refuses to sanction the alteration of an old law.

The right hon. Gentleman, in the course of his speech, alluded to several events that had occurred since the accession of the House of Hanover to the throne of this country, and has stated that all the instances justified the course he has now taken. I, however, must take the liberty of referring to some instances which would not have met the views of the right hon. Baronet. What has been the conduct of previous Governments on the rejection of new measures propounded by themselves, and which have been rejected by Parliament? In the first instance, does the right hon. Baronet forget the conduct pursued

by Lord Sunderland and Lord Stanhope on the Peerage Bill? . . . Has any measure more important ever been brought before Parliament than that during the Government of Lords Sunderland and Stanhope, with respect to the peerage? The proposition was to confine the prerogative of the Crown to the then number of peers, and to allow only an addition of six more to the number. That measure was introduced into the other House, after a recommendation from the Throne; and, although it met with the general approval of the other House, it was almost unanimously rejected by the House of Commons. Did Lord Stanhope then resign? Did anyone in opposition to the Government call upon him to resign? I am sure, if any such demand had been made, that the answer of either Lord Stanhope or Lord Sunderland would have been—'What, give up the seals of office at the present time, and let the Jacobites in?' I am sure that the right hon. Baronet will not for a moment imagine that I intend any offensive allusion. The reply, then, of those great statesmen would have been, 'What! in such a moment abandon our offices, and let men into power whom we believe to be concealed traitors?' . . . Neither Lords Stanhope nor Sunderland gave way, and resigned in consequence of the rejection of the Peerage Bill, and I think that they were perfectly right, and were justified in the course which they took.

Again, Mr. Pitt followed a nearly similar course in 1786. This ease was rather stronger than the former, for, in consequence of the influence of the then Duke of Richmond with the Government, Mr. Pitt, as Minister, was induced to bring forward a proposition for the general fortification of the coasts. This was shortly after the American war, during which our coasts had been threatened, and strong fears were entertained of landings and invasions, and the feelings which had been excited during the war had not had full time to subside. The resolution of Mr. Pitt was,

'That it appears to this House that to provide effectually for securing his Majesty's dockyards at Portsmouth and

Plymouth by a permanent system of fortification, founded on the most economical principles, and requiring the smallest number of troops possible to answer the purpose of such security, is an essential object for the safety of the State intimately connected with the general defence of the Kingdom, and necessary for enabling the fleet to act with full vigour and effect for the protection of commerce, the support of our distant possessions, and the prosecution of offensive operations in any war in which the nation may hereafter be engaged.'

On the division Mr. Pitt was beaten, and immediately after the vote, he stated that he took it as the decision of the House on the subject, but he did not tender his resignation. Did any of the eminent men then opposed to him call upon him to resign, or propose a resolution similar to the present, because he had not sufficiently the confidence of the House of Commons to enable him to carry through the House a measure which he termed in his motion an essential object for the safety of the State? Did either Mr. Burke, Mr. Fox, or Mr. Windham complain of the conduct of the Government? No; for, if they had, what would have been Mr. Pitt's answer? He would have said, it is true that he had brought forward a very important measure, which he could not induce the House to sanction; but he did not conceive himself called upon to retire from office on that ground. He would have said it was for him to consider whether those who were likely to come after, or succeed him, were more likely to have the confidence of the House in the administration of the existing law than himself. He would have asked himself, were they more able than himself to carry useful measures? The result would have been that he would have replied that, on general principles, as the administrator of the law as it stood, he had the confidence of the House of Commons.

I ask if, because the House throws out new measures, not essential to the existing law, a Minister of the Crown introducing them is bound to resign? I believe that the right hon. Baronet was a member of the Government

when the property-tax was rejected. On that occasion, did either Mr. Ponsonby, Mr. Whitbread, or any other leader of the Opposition call upon the Government to resign? Looking to the amount of the tax, that was a matter of more importance than the recent proposal of the Government, but no one made any suggestion of the kind. If any one had, the answer of Lord Castlereagh would have been, that he believed that the House had more general confidence in the then Government than they were likely to have in the Opposition, if called upon to take office, and, therefore, that the Government were determined not to resign. I consider that this would have been a good and sound reason for refusing to resign.

All these cases, however, were anterior to the Reform Bill. Now, those who recollected the discussions in this House on that great measure must remember that it was stated repeatedly by almost all who took part in the debate that for the future a Government could not depend on a large body of thoroughgoing supporters, but that a very strong Government would have to contend with obstacles they had not formerly to encounter. It should be recollected also that, in case of the defeat of a Government under the old system, the majority was not made up by parties who had left them, who were members for small boroughs, but the representatives of counties or large constituencies. If you were to examine Mr. Pitt's defeats, you would find that they were not occasioned by the small boroughs but by the flinching to decide of the more open and liberal boroughs. If, before the Reform Bill, the most powerful Ministry was exposed to have measures, which it deemed of importance, defeated, that is still more probable after that Bill. If the right hon. Baronet should found his case as to constitutional law upon the nicely-balanced state of the House of Commons which has been produced by the Reform Bill, he would find that, were he to come into office, but very few months would elapse ere, by the operation of the same principle, he himself would be very unpleasantly reminded of the same constitutional law.

For myself, I do not hold that any Government is bound to resign, because it cannot carry legislative changes, except in particular cases, where they are impressed with the conviction that, without such and such a law, they cannot carry on the public service; and when this is a case which does not depend upon whether the hindrance arose from King, Lords, or Commons. I am quite sure that, on both sides of the House, gentlemen will feel that there are many ways in which it may be ascertained whether the House does or does not repose confidence in a Ministry, without putting on the records of the House so ill-advised and unsound a resolution as this, declaring that such and such were the principles of the Constitution.



THE POSITION OF A MINISTRY NOT SUPPORTED  
BY THE HOUSE OF COMMONS

LORD JOHN RUSSELL (*afterwards Earl Russell*)

*House of Commons, 4 June 1841*

(58 *Parl. Deb.*, 3 s., 1194 ff.)

[SEE note on No. 14.]

Let us consider what has been the course of the Constitution of late years; for I suppose, that there is no one who will not admit that, with a change of circumstances, and with a difference in the position of the country, a different course of administration becomes necessary; and that, although the general spirit of the Constitution remains the same, yet the mode in which it is to be acted upon must vary from time to time. If the House will consider what has been the course of the Constitution for the last century, I think they will see, that that which is required from Ministers, at the present time, is very different from that which was required formerly; and that the task imposed upon Ministers formerly, was much less difficult than that which they have now to undergo.

If the House will refer to what has passed in the course of the present debates, they will perceive, that as I have already observed, the general course of our Administration is not the point in dispute. We are not charged with having crippled the resources of the country, by involving it in unnecessary and expensive wars, or by having exposed it to tumults and insurrections, which we had not the power to quell. No; the charge against us is, that we have submitted certain measures for the approbation of Parliament, which we have wanted sufficient power to carry, in the shape of Bills, through this House.

Now, if we look back to the greatest statesmen which the country has ever produced—to those whose names

are most regarded for the genius and ability which they displayed in the direction of affairs—if we look back to Sir R. Walpole, to Lord Chatham, to Mr. Pitt, and to Mr. Fox—if we refer to the Administrations of those great men, and then cast our eyes on the statute book, for the purpose of seeing what laws they have placed there, and what were the legislative measures they recommended and carried through Parliament, I fear we shall meet with but a meagre return, indeed, for our labour. It is not, that those Ministers did not answer all that was required of them in their time—it is not that they were not fully equal to the conduct of affairs, according to the principles they professed—but that the usages of the Constitution did not then require, that those at the head of the Government should bring forward legislative measures; and, indeed, for the greater part of the last century, did not even require them to take a uniform and consistent part, either in supporting or opposing measures submitted to Parliament.

In latter times, however, and more especially since the passing of the Reform Bill, the country and the Constitution have required a different course of conduct on the part of Ministers. What with the necessity for legislation—what with the difficulty which individual members experience in carrying through Bills—what with the great changes so long delayed, and which, after the passing of the Reform Bill, it was indispensable to make suddenly, and on various subjects—from all these different causes an expectation has arisen, that the Government should bring forward measures on subjects which excite public attention, and do their best to carry them through the House. But, when this is the case, I think it is unreasonable to expect, that a Government should possess the same general and uniform support, on the part of the House of Commons, which was required when Ministries had merely acts of administration to perform.

With respect to acts of administration, when a Minister, in possession of all necessary information, states his views to the House of Commons, the House is prepared,

either to give him its confidence, in support of his general policy, or to signify, by tokens which cannot be mistaken, that its confidence is withdrawn. But, with respect to measures of legislation, such as the Tithe Bill, the alteration in the criminal law, or the Poor-law Bill, and all measures of a similar kind, each member of the House is in possession of all the necessary information; and, though members may be disposed to yield a certain degree of deference to a Government, it can hardly be expected that they should place such unlimited confidence in them as to approve of every measure in detail which they introduce into Parliament. Therefore, if, on the one hand, new duties have been imposed on Ministers, and you require them to carry through Parliament measures, which they deem of essential importance; so, on the other hand, you must make a fair allowance for the effect of discussion, and the expression of the deliberate opinions, first, of members of this House; and, secondly, of our constituents, which will inevitably occasion the alteration of some measures and the rejection of others.

OCCASIONS FOR APPEAL TO THE PEOPLE  
*BENJAMIN DISRAELI (afterwards Earl of Beaconsfield)*

*House of Commons, 20 February 1846*

(83 *Parl. Deb.*, 3 s., 1319 ff.)

[AFTER Sir Robert Peel had made known his decision to undertake the total repeal of the Corn Laws, a motion was made, on behalf of the Ministry, for the House of Commons to go into Committee on the proposals. Disraeli spoke for the Protectionists; and his speech is an early exposition of the doctrine that the mandate of the people is required for important departures in policy.]

We have been addressed in support of the measure of the Government by three Cabinet Ministers. It is due to the right hon. Gentleman the First Minister—due to his position, and to the comprehensive statement which he made of the case of the Ministers, that I should, perhaps, in the first instance, notice what that right hon. Gentleman said. He seemed to complain that the greater part of this discussion had been wasted by observations on the conduct of party. I have no wish myself to enter into that subject; nor should I have noticed it, had not the right hon. Gentleman, by the use which he made of the word 'party', then, as well as on other occasions, seemed to entertain on that point ideas very different from those which animate and influence gentlemen on these Benches. We have, indeed, heard from these Benches many comments on the conduct of party; but we associate with that word very different ideas from those which the right hon. Gentleman seems to entertain. We do not understand that party is anything but public opinion embodied. We protest against the doctrine of the right hon. Gentleman, that there is a distinction between political party and public opinion. We maintain that party is public opinion embodied, whether it represent the opinion of

a majority or a minority; it, at all events, represents the opinion of a great section of the community. In this country, where the nation is divided into parties, and where great results are brought about by public discussion, and by the organization also, no doubt, of material interests—in this country, by these two agencies, reason and property, we arrive in times of change at the solution of controversies the most difficult. Such are the beneficial consequences of this system, that, however fierce the controversial strife—however violent the agitation of the nation—still you will always find that when a question is settled by the legitimate influence of what the right hon. Gentleman calls 'party', but which is in fact national organization, the nation is content and satisfied with the decision; and you seldom see a question so settled reopened.

We do not complain of the right hon. Baronet for having changed his opinion—opinion is not in the power of human will; but what we complain of is, not that he has deferred too much to public opinion, but that he has outraged public opinion—that he has prevented its legitimate action in the settlement of questions by the aid of party, or embodied public opinion—and that he has arrived at a conclusion, and probably will achieve a result, which will not be, on account of the mode in which it has been brought about, satisfactory to the community. We say, and say with reason, that by the aid of that great mass of public opinion which we represent, the right hon. Baronet was raised into power; and that a Parliament was elected to give effect to that opinion which we represent, and the right hon. Baronet has disregarded. If the noble Lord opposite, who represents another section of public opinion, had succeeded and been made Minister—if his side had succeeded in becoming the majority, and had settled these questions, we should then have yielded; because we should have felt that the solution of these questions had been brought about by constitutional means—by the legitimate operation of public opinion. But we feel that this question is

not now settled, and cannot be settled, in a constitutional manner. It is not merely that we have the sad spectacle of the right hon. Baronet surrounded by a majority, who, while they give him their votes, protest in their speeches against his policy ['No, no!']—is not that the fact? I thought there was no doubt about it; and that the illustrious converts that we have heard of, are converts to the policy and not to the principles of the right hon. Gentleman. There is not only the flagrant scandal of a Minister bringing forward under such circumstances a great measure, with, as he has announced himself, the majority of his Cabinet against him, but public opinion is not fairly dealt with; and when we complain of the right hon. Baronet not treating his party fairly, we do not speak of the 300 gentlemen on these Benches, but we speak of the great body of the community whose views they represent, and of that public opinion which is the result of their convictions.

## OCCASIONS FOR APPEAL TO THE PEOPLE

SIR ROBERT PEEL

*House of Commons, 29 June 1846*(87 *Parl. Deb.*, 3 s., 1041 ff.)

[PEEL announced in the House of Commons that, as his Ministry had been defeated in the House on 25 June 1846, in regard to one of its measures, they had decided to resign. His reasons for preferring resignation to a general election displayed a lack of appreciation of the growing part taken by the People in the choice of a Ministry and implied an adherence to the obsolescent notion that the honour of the Crown was concerned in an appeal to the electorate. Cf. Nos. 5 and 11.]

Her Majesty, Sir, has been graciously pleased to accept our tender of resignation, and her servants now only hold their offices until their successors shall have been appointed. I said, Sir, that if I had complaints to prefer, this is not the occasion on which I would prefer them. But I have no complaints to make. I did not propose the measures connected with the commercial policy of the Empire, which have been so severely contested, without foreseeing the great probability that, whether those measures should succeed or fail, they must cause the dissolution of the Government which introduced them. And, therefore, I rather rejoice that Her Majesty's Ministers have been relieved from all difficulty, by an early and unambiguous decision of the House of Commons; for I do not hesitate to say, that even if that decision had been in our favour on the particular vote, I would not have consented to hold office upon sufferance or through the mere evasion of parliamentary difficulties. It is not for the public interest that a Government should remain in office when it is unable to give practical effect to the measures it believes necessary for the national

welfare; and I certainly do not think it probable, in the position in which Her Majesty's Government were placed by the withdrawal—perhaps the natural withdrawal—of the confidence of many of those who heretofore had given it support, that even if the late vote had been in our favour, Ministers would have been able with credit to themselves, and with advantage to the interests of the country, to conduct the administration of public affairs.

We have advised Her Majesty to accept our resignation at once, without adopting that alternative to which we might have resorted, namely, recommending to the Crown the exercise of its prerogative, and the dissolution of the present Parliament. I do not hesitate to avow, speaking with a frankness that I trust will offend no one, that if Her Majesty's Government had failed in carrying, in all their integrity, the main measures of commercial policy which it was my duty to recommend, that there is no exertion that I would not have made—no sacrifice that I would not have incurred—in order to ensure the ultimate success of those measures, or at any rate to give the country an opportunity of pronouncing its opinion on the subject. For such a purpose, I should have felt justified in advising dissolution; because I think the continuance of doubt and uncertainty on such important matters, would have been a greater evil than the resort to a constitutional mode of ascertaining the opinion of the nation. But there has been fortunately no necessity for a dissolution of Parliament upon that ground. Those who dissented most strongly from our commercial policy, withdrew all factious and unseemly opposition, and, protesting against our measures, they have finally allowed them to pass. Those measures having thus become the law, I do not feel that we should be justified, for any subordinate considerations, for the mere interests of Government or party, in advising the exercise of the prerogative to which I have referred, and the dissolution of Parliament. I feel very strongly that no Administration is justified in advising the exercise of that prerogative



unless there be a reasonable presumption, a strong moral conviction indeed, that after dissolution they would be enabled to administer the affairs of the country through the support of a party sufficiently powerful to carry their measures.

I do not think a dissolution justifiable for the purpose merely of strengthening a party. The power of dissolution is a great instrument in the hands of the Crown; and it would have a tendency to blunt the instrument if it were employed without grave necessity. If the purpose were to enable the country to decide whether Ministers had been justified in proposing the measures of commercial policy brought forward at the beginning of the session, those measures having passed into a law, I do not think such a purpose alone would be a sufficient ground for a dissolution.

There ought also to be a strong presumption that, after a new election, there would be returned to this House a party with strength sufficient to enable the Government, by their support, to carry on that system of public policy of which it approved. I do not mean a support founded upon mere temporary sympathy, or a support founded upon concurrence in one great question of domestic policy, however important. We ought not, in my opinion, to dissolve without a full assurance that we should have the support of a powerful party united with us by accordance in general views and principles of government. In the present state and divisions of party, and after all that has occurred, I do not entertain a confident hope that a dissolution would give us that support. I think, too, that after the excitement that has taken place—after the stagnation of trade that has necessarily followed our protracted discussion on the Corn Laws and the Tariff, it is not an advantageous period for a dissolution, but that the country should be allowed an interval of tranquillity and repose. We have, therefore, on these several grounds preferred instant resignation to the alternative of dissolution.

## OCCASIONS FOR APPEAL TO THE PEOPLE

WILLIAM EWART GLADSTONE

*House of Commons, 4 May 1868*(191 *Parl. Deb.*, 3 s., 1710 ff.)

[AFTER Disraeli had made a statement, following on the defeat of his Ministry in regard to the Irish Church Resolutions, Gladstone spoke, challenging the right of a Ministry to appeal to the People at any chosen juncture, and, in particular, challenging the right of the Ministry to appeal to the People at that time. Cf. No. 11.]

The right hon. Gentleman [Mr. Disraeli] has made constitutional propositions, or rather propositions touching the Constitution, such as I for one am not able to pass without notice. The right hon. Gentleman treats it as a matter of course that every Administration, or at least every Administration sitting in a Parliament that was called into existence before the Ministry itself, is entitled, for no other cause than the cause of its own existence, to inflict upon the country a dissolution; and the right hon. Gentleman has distinctly told us that that infliction was the measure which he advised Her Majesty to adopt upon the present occasion. I have said to 'inflict' upon the country a dissolution, because, from very old date and by high parliamentary authority, the epithet 'penal' has been attached to dissolutions of that character. Sir, I question, I challenge the doctrine of the right hon. Gentleman. I must tell him that if he wants authorities to support his doctrine—if he wants precedents to sustain it, those precedents must be drawn from the former conduct of the Earl of Derby and himself. Where will the right hon. Gentleman find a case, until Friday last, in the whole history of this country, in which a Ministry, twice defeated by majorities of 60 and 65,

advised the resort to a dissolution? There is no such case.

The right hon. Gentleman speaks as if this resort to a dissolution—an adverse or penal dissolution—were an everyday practice. What are the instances of such resort? The case of 1841 is a doubtful precedent; the Government which appealed to the country did so with a majority against it of a single vote. It was the same in the famous and memorable case of 1784, when, if I recollect rightly, Mr. Pitt appealed to the country after a division in which 190 members voted for him and 191 against him. The right hon. Gentleman has named Sir Robert Peel; but he will not tell me that the opinion of Sir Robert Peel was that every Ministry was justified, upon the plea that the Parliament had not been elected under what the right hon. Gentleman calls its influence, in making a dissolution a previous condition to its resignation. In the first place, I deny that the question whether the Parliament was elected with this or that Government in office is a consideration which, according to the doctrine of our Constitution, enters into the case in the manner and in the degree in which the right hon. Gentleman has represented it does. The right hon. Gentleman seems to suppose that such is the influence of an existing Government that it must necessarily be taken for granted that the effect of that influence is powerfully and conclusively felt in the elections. [Mr. Disraeli made a gesture of dissent.] Very well, if the right hon. Gentleman does not take that for granted he only enables me the more broadly to question his proposition and to ask him to show me, from the history of this country, and from great constitutional authorities other than members of the Governments of Lord Derby, where the doctrine is laid down that, irrespective of other considerations, an Administration as an existing Administration is entitled to make an appeal to the country a condition previous to its resignation of office. Sir Robert Peel in 1846—beaten by a small majority, and having just carried a measure which insured for him unrivalled popularity—did not thus

appeal to the country. I conceive the right hon. Gentleman is the person who is bound to prove his proposition. He has quoted no precedent whatever. . . .

There are two conditions, as it appears to me, which are necessary in order to make an appeal to the country by a Government whose existence is menaced [by] a legitimate appeal. The first of them is that there should be an adequate cause of public policy; and the second of them is that there should be a rational prospect of a reversal of the vote of the House of Commons. I have not said one word against the advice given by the right hon. Gentleman so far as it may be thought it can be founded upon one of those two principles. At the same time, I am not willing now to conceal my opinion that the right hon. Gentleman was not well justified in that advice. The right hon. Gentleman and his colleagues, as I have shown, are too much given to this practice of dissolution. Dissolution in 1852, dissolution in 1859, dissolution in 1868—and all these to determine the question whether the right hon. Gentleman and his friends were to continue in office. Dissolution in 1852—the people gave their reply, and it was a negative one; dissolution in 1859—the people gave their reply, and it was again a negative one; and I entirely question this title of Governments, as Governments, to put the country as a matter of course to the cost, the delay, and the trouble of a dissolution to determine the question of their own existence. But, if I am told, on the other hand, that the right hon. Gentleman would never have thought of referring to the country, especially for the third time after two unfavourable answers, the mere ministerial existence of himself and his colleagues, but that he did think he was justified in referring to the country the great question of the Irish Church, then, Sir, my duty is to regard that matter from a perfectly distinct point of view; and I say first of all that the right hon. Gentleman would be the first Minister who had declined to adopt, as a sufficient evidence of the judgment of the country, those majorities of 60 and 65 which have been recorded against him. Now, that is a

matter of history—that is a matter of historical fact; and it is open to the right hon. Gentleman, or any other member of this House, to question what I have said. But that is not all. We are now told that the question of the Irish Church was what was to be referred to the constituencies. Well, but the right hon. Gentleman has from the first denied that the present Parliament or the present constituencies ought to deal with the question of the Irish Church. And not only has he denied that, but it is admitted on all hands, nay, it is part of the case of the right hon. Gentleman when he comes to another portion of the argument, that when we are about greatly to broaden the basis of our representative institutions it is fair and right that the ultimate decision of the question should depend on the representatives of the new constituencies. Therefore the plea that this was to be a reference on the question of the Irish Church is no plea at all.

Suppose that the right hon. Gentleman's ill-judged advice had been accepted by Her Majesty—as, happily, it was not—but suppose it accepted by Her Majesty, and the new Parliament had met, for what purpose would the new Parliament have met? Would that Parliament have disposed of the question of the Irish Church? Certainly not. All that the new Parliament could have done would be to have dealt with such a policy as I have humbly recommended, and shall again humbly recommend, the adoption of a Suspensory Act. That is the utmost the new Parliament would have done, and then it would have been justly confronted with the necessity of completing the work of Reform, and adjourning to the Parliament of the *paulo post futurum* the final settlement and adjustment of the Irish Church question. Therefore, I am bound to say that the only question for the sake of which the right hon. Gentleman thought fit to advise Her Majesty, in the face of great public inconvenience, to dissolve the present Parliament, with the certainty of another dissolution impending within a few months—possibly six or nine months afterwards—the only question, I say, for the sake of which he gave that advice was

in truth the question of his own ministerial existence. I do not wish to be responsible by my silence for allowing the statement of that advice to the House to pass without notice; that I, for one, do not think that the right hon. Gentleman who gave it was acting in the spirit of the Constitution, and I am heartily and thoroughly glad that that advice, though tendered, was not accepted.

## OCCASIONS FOR APPEAL TO THE PEOPLE

MARQUIS OF HARTINGTON

*(afterwards Duke of Devonshire)**House of Commons, 9 April 1886**(304 Parl. Deb., 3 s., 1240 ff.)*

[AFTER Gladstone had moved for leave to introduce his first Home Rule Bill, which was an unexpected departure in policy, not mentioned at the general election at the end of 1885, Lord Hartington gave expression to the modern doctrine of the need for the People's approval before the introduction of such a measure.]

I should like to say a few words as to what seems to me to be the position of extreme difficulty and embarrassment in which the country, this House, and especially the Liberal Party in this House, have been placed by the course which has been taken. We approached the recent general election in circumstances of unusual preparation and consideration. The Government of my right hon. Friend had very recently been displaced, mainly by the action of the hon. Member for Cork [Mr. Parnell] and his friends. The policy which we had then thought it our duty to pursue had entailed upon us the bitter, the persistent, and undisguised hostility of that party. It had been our duty to ask for, it had been our privilege to receive, the cordial and loyal support of our party in enforcing the administration of the law as carried out by the Government of Lord Spencer in Ireland, and that policy had entailed upon us the open and avowed hostility of the party of the hon. Member for Cork.

Well, Sir, we went to that election, knowing this state of things, knowing that we were to receive the undisguised opposition of that party. We made no attempt to conciliate or to avert it. We accepted that opposition; and, as far as the public declarations of almost every one

of us were concerned, we placed ourselves before the country as pre-eminently the friends of the maintenance of law and order in Ireland, as they had been carried out by my noble Friend Lord Spencer and his Administration. We did not spare, as I think we were justified in not sparing, what we thought was the culpable laxity of right hon. Gentlemen opposite in relation to this question of the maintenance of law and order in Ireland; and we did all that we could in our speeches and in our public declarations to place ourselves before the country as the party which was pre-eminently identified with the strict and firm administration of the law in Ireland, and the maintenance of order in that country. Well, Sir, while by this course we earned the hostility of the party which follows the lead of the hon. Member for Cork, we came, at the same time, under certain engagements to the people of this country, and they were justified in looking to us as the party which, under all or under any circumstances, was prepared to maintain the firm administration of the law of Ireland. Now, Sir, was there anything in the declarations of most members of the Liberal Party to lead the country to suppose that we had in view any new policy, any radical changes, which, by the sacrifice of any of our pre-conceived convictions or antiquated prejudices, would henceforth render unnecessary that stern and firm administration of the law which we had hitherto upheld, and which would for ever obviate the necessity of a recurrence to that policy?

Sir, we went to the election mainly guided by the address which my right hon. Friend [Mr. Gladstone] issued in September last to the electors of Mid Lothian. I shall refer in a moment to the passage in that address which especially dealt with the question of Ireland. What I want to refer to now is the position which that passage held in that address, in order to show that, in the judgment of my right hon. Friend, at that time, there was no thought and no warning held out to the country that a radical reform in the relations between Great Britain and Ireland would be the main work of the present



Parliament. My right hon. Friend called special attention to four questions. He called attention to the question of procedure in Parliament; to the question of Local Government in the whole Kingdom; to the question of the Land Laws as relating to the whole Kingdom; and to the question of registration as the completion of the recent electoral reform. My right hon. Friend said those were the legislative subjects of the moment which had reached maturity. 'The work,' he said—

'is ready, the workmen are ready, and only await the mandate of the constituencies to proceed with it.'

My right hon. Friend also referred to other matters in the most distant future. He referred to the question of Education; to the question of the Established Church; and to the question of the future position of the House of Lords. Those were subjects, he said, upon which public opinion was less ripe, and which were not mature for immediate legislative action. But, Sir, if it had occurred for one moment to my right hon. Friend at that time that the question of self-government in Ireland had reached the stage of maturity for legislative action, did not my right hon. Friend know that every one of those four subjects to which he called the immediate and pressing attention of the country must inevitably have been relegated to a future as dim and as distant as that to which he relegated the question of the Established Church, if it had been in his mind that at the very outset of the labours of this Parliament we should be called upon to deal with the enormous question of the future legislative relations between Great Britain and Ireland?

Now, Sir, let me refer to the passage in the address of my right hon. Friend which referred immediately to the question of Ireland. My right hon. Friend has quoted that passage in a debate in the present Parliament, and I have no doubt most hon. Members are familiar with it; but perhaps I may read a few words from it. He said—

'In my opinion, not now for the first time delivered, the limit is clear beyond which any desires of Ireland, constitu-

tionally ascertained, cannot receive the assent of Parliament. To maintain the supremacy of the Crown, the unity of the Empire, and all the authority of Parliament necessary for the conservation of that unity, is the first duty of every Representative of the people. Subject to this governing principle, every grant to portions of the country of enlarged powers for the management of their own affairs is, in my view, not a source of danger, but a means of averting it, and is in the nature of a guarantee against it. . . .

Then, Sir, I say that in this state of things, going to the election in these circumstances, the country had no sufficient warning—I think I may say the country had no warning at all—that any proposals of the magnitude and vastness of those which were unfolded to us last night were to be considered in the present Parliament, much less were to form the very first subject of consideration upon the meeting of this Parliament.

Sir; I am perfectly aware that there exists in our Constitution no principle of the mandate. I know that the mandate of the constituencies is as unknown to our Constitution as the distinction between fundamental laws and laws which are of an inferior sanction. But although no principle of a mandate may exist, I maintain that there are certain limits which Parliament is morally bound to observe, and beyond which Parliament has morally not the right to go in its relations with the constituents. The constituencies of Great Britain are the source of the power, at all events, of this branch of Parliament; and I maintain that, in the presence of an emergency which could not have been foreseen, the House of Commons has no more right to initiate legislation, especially immediately upon its first meeting, of which the constituencies were not informed, and of which the constituencies might have been informed, and as to which, if they had been so informed, there is, at all events, the very greatest doubt as to what their decision might be.

## COLLECTIVE RESPONSIBILITY OF THE MINISTRY

STANLEY BALDWIN

*(afterwards Earl Baldwin of Bewdley)*

*House of Commons, 8 February 1932*

*(261 H.C. Deb., 5 s., 530 ff.)*

[AFTER it had been decided that certain members of the MacDonald Coalition Ministry should retain their places, though in disagreement with part of the Ministry's policy, Mr. Lansbury moved a vote of non-confidence, based on the alleged violation of 'the long-established principle of Cabinet responsibility'. Mr. Baldwin defended the Ministry. Soon after this debate the dissentient members of the Ministry found their retention of office impracticable, and they resigned.]

We want to clear our minds this afternoon, first of all, as to whether we are deviating from the constitutional course, when we have decided what that constitutional course is. The first thing to get clear in our minds is that our Constitution, more than any Constitution in the world, is a living organism. It is largely because it is a living organism and because of the changes that have occurred in the body of its practice and conduct through the centuries that our people have in so large a degree, and I believe more than any other people, two qualities, rare in themselves and rarer in combination—a profound reverence for the traditions of their country, together with the capacity to tread new paths when the occasion arises.

The historian can tell you probably perfectly clearly what the constitutional practice of this country was at any given period in the past, but it would be very difficult for a living writer to tell you at any given period in his

lifetime what the Constitution of the country is in all respects, and for this reason, that at almost any given moment of our lifetime there may be one practice called 'Constitutional' which is falling into desuetude and there may be another practice which is creeping into use but which is not yet called 'Constitutional'. There may be changes on the horizon to be seen only by some man of vision. I was interested to find last night, when I had finished making the notes for my speech, that that very point—I think it is an obvious one—was taken by no less an authority than Walter Bagehot in the preface to the second edition of his work on the Constitution, when he had cause to write of the great changes in constitutional practice which had occurred in the short seven years since the first edition was published. I will not read his words, but I would call attention to the matter in confirmation of the fact that he, at the beginning of that preface, seizes on the points which I have just mentioned.

The very Cabinet system itself which, of course, is the basis of the whole question we are discussing this afternoon, if I may use a broad and general term to cover it, for quite a generation after the first germs of the system appeared in Charles II's reign was denounced as unconstitutional. I think it is necessary to dwell upon this development in order to clear our minds in regard to the position in which we find ourselves to-day. It is very difficult always to realise how things looked in a past generation. To-day, a very favourite phrase used by members of Parliament is 'legislators.' We have all been called 'legislators,' but legislation is an extremely modern function. As recently as the time of Chatham you will find that throughout his Administration practically no important changes were made in the law. You will find in the time of his son, William Pitt, that he never thought of resigning office if legislation introduced by his Government into Parliament failed to pass. Was his position at that time constitutional? These are difficult questions to answer. I would ask the House for one moment to contrast the position of William Pitt with that of Sir

Henry Campbell-Bannerman on the Cordite Vote in the House of Commons, which is in the memory of many of us.

Sir Henry Maine—I do not know whether anyone reads him now—who always had a very vivid way of painting a picture, showed in very few words the position of the British Government and the British Cabinet for about a third of the eighteenth century. George I and George II cared a great deal about Hanover and being Kings of Hanover, and much less about England and being Kings of England. So there was a tacit understanding between the Whig aristocracy and these two Monarchs that the Whig aristocracy should concern itself with England, and the Kings should concern themselves with Hanover. But when George III came, he cared very little for Hanover and a great deal for England. He cared a great deal for being King of England, he hated the Cabinet system and he wanted to be, as King of England, the dictator of English policy. He refused to submit to the Cabinet. Was his position constitutional at that time or not? A very difficult question to answer. Up to that point you have innumerable instances of Ministers both voting and speaking against the measures and policy of their own Government. The success of those votes and those speeches depended largely upon the character of the man who was at the top. It was an easier thing to speak against Newcastle than it had been to speak against Walpole. It was done, and done repeatedly, up to North's time.

As to the position of the Prime Minister, it is only within the time and the memories of those sitting here that the Prime Minister's place has appeared in the official precedence of this country. When did the Prime Minister's position become constitutional? That is not an easy question to answer. The real struggle began in the reign of George III. The whole struggle of the eighteenth century was the struggle between the King and the Ministers. Two points of view were held. One point of view was that each Minister, as a servant of the

Crown, was responsible for his own Department, with little or no reference to his colleagues. The second view was that Ministers were a homogeneous body, with one Minister to direct and give unity. The King, of course, favoured the first view, because by that means, and that means alone, he could control the policy of this country. The struggle went on for nearly a generation, and the King lost. Probably the event that marked the end of that long constitutional struggle was the dismissal of Thurlow, the last Minister to claim that he had a right to the King's ear as Lord Chancellor and Keeper of the King's Conscience. It was not the mere fact of having conversation with the Monarch that mattered, but the fact that Ministers could discuss with him behind the back of their own leader, and if the King happened to be an extraordinarily able politician he could split any British Government into fragments at any time. So there was a very great principle at the back of that struggle.

It was Pitt who ultimately made responsible Ministers the true source of power, and formed the system of government which has lasted practically until the present time. We owe to the statesmen of that period a very great debt, consciously or unconsciously, as that struggle went on. It is inconceivable to-day that the Monarch could play the party game that was played in those days. The Monarch to-day plays a far greater game, if I may use the word, than did the Monarch in King George III's time. It is true that the Crown has been shorn of the power of initiating policy, but it has gained this, that throughout the whole of the British Empire, through all the races of the peoples who compose that great agglomeration, he is our King; he is every man's King as he is ours.

Going back to George III's time, the peril of the country through the great French War caused the struggle between the Crown and the Ministers to cease, and collective responsibility became the rule. It had grown—and this is a point to which I would call the attention of the House—with the growth of parties. It was not

necessary to the formation of party itself that it came in, but it came in to fight the party of the King's friends. That was how the battle went on, first as against the King's friends and then to maintain the position of the Government in Parliament. That has been the fact ever since. As party government grew and strengthened in this country, so that rule became essential for the maintenance of party government. Party discipline is necessary to party survival. It is not always put as crudely as that in this House, but it is put as crudely as that by Professor Lowell, of Harvard University. One could expect, perhaps, the intelligent observer from overseas to lay his finger on that point in dealing with English constitutional matters.

To-day, whatever the right hon. Gentleman may say, we have a National Government. In other words, it is not the Government of one party. It is a Government consisting of representatives of the three parties. Secondly, if we look for a moment at the enormous majority which supports the Government, it is perfectly true to say of many of them that we should not have had the pleasure of their company here if they had not stood as supporting a National Government. Therefore, the great principle for which the fight for a century and more went on is not at stake here. The fate of no party is at stake in making a fresh precedent for a National Government. Had the precedent been made for a party Government, it would have been quite new, and it would have been absolutely dangerous for that party.

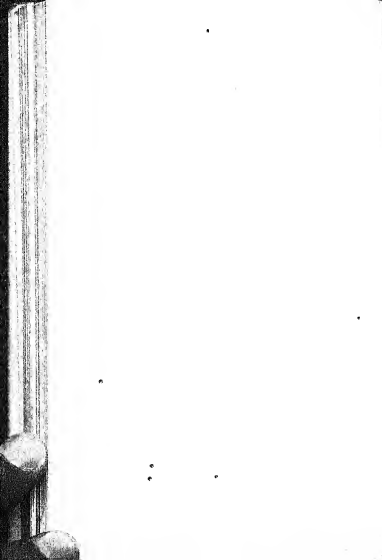
Domestically the tariff issue is one of great importance. Internationally for the Government the world problems are infinitely more difficult, and, whatever the right hon. Gentleman may say, we believe that it would have been a grave matter for the world at large if, within a few months of the inauguration of this Government, there had been a secession of any section of its members. It is very interesting that all the dissentient voices in this matter come from those who would like to see the Government split.

You ask, is what we are doing constitutional? I remember very well—and it shows how at times questions are asked, and at other times silence is maintained—after the general election of 1929 having a discussion with many of my friends as to whether we should resign at once or meet Parliament. Some of my friends, perhaps with greater knowledge of the Constitution than I, took the view that the constitutional position was to meet Parliament and accept our dismissal by Parliament. I took the view, that whatever had been the constitutional position, under universal suffrage the situation had altered; that the people of this country had shown plainly that whether they wanted hon. Members opposite or not, they certainly did not want me, and I was going to get out as soon as I could. My colleagues agreed with me, but I do not remember right hon. Gentlemen opposite asking me whether I behaved constitutionally. They were getting into our places before we had time to move.

Is our action constitutional? Who can say what is constitutional in the conduct of a National Government? It is a precedent, an experiment, a new practice, to meet a new emergency, a new condition of things, and we have collective responsibility for the departure from collective action. Whatever some ardent politicians may think, it is approved by the broad common sense of the man-in-the-street. The success or failure of this experiment will depend on one thing only, and that is the spirit in which it is conducted. I have every hope, I have every desire, that that spirit—I know the taunts which will be levelled at us—will be found equal to the task, that this experiment may be so conducted that it may prove successful, and that the judgment of future generations will be that the House of Commons by the vote to-night took a step of wisdom and common sense.

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III  
HOUSE OF LORDS  
ITS CONSTITUTION



## THE HOUSE OF LORDS BILL, 1719

ROBERT WALPOLE

*(afterwards Sir Robert Walpole and, later, Earl of Orford)**House of Commons, 18 December 1719**(7 Parl. Hist. 618 ff.)*

[THIS Bill was devised by the Whigs, led by Sunderland and Stanhope, with the object of limiting the numbers of the House of Lords, and so providing against the risk of the next King creating a large number of Tory peers. If the Bill had passed, the proper balance between Crown, Lords, Commons, and People would have been seriously upset. The rejection of the Bill by the House of Commons was chiefly due to Walpole's speech, which evidently had great effect on his hearers. The report must be regarded as giving the substance of the speech only. Cf. Nos. 4, 9, 10, and the whole of § IV.]

Among the Romans, the wisest people upon earth, the Temple of Fame was placed behind the Temple of Virtue, to denote that there was no coming to the Temple of Fame, but through that of Virtue. But if this Bill is passed into a law, one of the most powerful incentives to virtue would be taken away, since there would be no arriving at honour, but through the winding-sheet of an old decrepit lord, or the grave of an extinct noble family; a policy very different from that glorious and enlightened nation, who made it their pride to hold out to the world illustrious examples of merited elevation,

'Patere honoris scirent ut cuncti viam.'

It is very far from my thoughts to depreciate the advantages, or detract from the respect due to illustrious birth, for though the philosopher may say with the poet,

'Et genus et proavos, et quae non facimus ipsi,  
'Vix ea nostra voco;'

yet the claim derived from that advantage, though fortuitous, is so generally and so justly conceded; that every endeavour to subvert the principle, would merit contempt and abhorrence. But though illustrious birth forms one undisputed title to pre-eminence, and superior consideration, yet surely it ought not to be the only one. The origin of high titles was derived from the will of the Sovereign to reward signal services, or conspicuous merit, by a recompence which, surviving to posterity, should display in all ages the virtues of the receiver, and the gratitude of the donor. Is merit then so rarely discernible, or is gratitude so small a virtue in our days, that the one must be supposed to be its own reward, and the other limited to a barren display of impotent good-will? Had this Bill originated with some noble peer of distinguished ancestry, it would have excited less surprise; a desire to exclude others from a participation of honours, is no novelty in persons of that class: *'Quod ex aliorum meritis sibi arrogat, id mihi ex meis ascribi nolunt.'*

But it is matter of just surprise, that a Bill of this nature should either have been projected, or at least promoted by a gentleman [Lord Stanhope], who was, not long ago, seated amongst us, and who, having got into the House of Peers, is now desirous to shut the door after him.

When great alterations in the Constitution are to be made, the experiment should be tried for a short time before the proposed change is finally carried into execution, lest it should produce evil instead of good; but in this case, when the Bill is once sanctioned by Parliament, there can be no future hopes of redress, because the Upper House will always oppose the repeal of an Act, which has so considerably increased their power. The great unanimity with which this Bill has passed the Lords, ought to inspire some jealousy in the Commons; for it must be obvious, that whatever the Lords gain, must be acquired at the loss of the Commons, and the diminution of the regal prerogative; and that in all disputes between the Lords and Commons, when the House

of Lords is immutable, the Commons must, sooner or later, be obliged to recede.

The view of the Ministry in framing this Bill, is plainly nothing but to secure their power in the House of Lords. The principal argument on which the necessity of it is founded, is drawn from the mischief occasioned by the creation of twelve peers, during the reign of Queen Anne, for the purpose of carrying an infamous Peace through the House of Lords; that was only a temporary measure, whereas, the mischief to be occasioned by this Bill, will be perpetual. It creates 31 peers by authority of Parliament; so extraordinary a step cannot be supposed to be taken without some sinister design in future. The Ministry want no additional strength in the House of Lords, for conducting the common affairs of government, as is sufficiently proved by the unanimity with which they have carried through this Bill. If, therefore, they think it necessary to acquire additional strength, it must be done with views and intentions more extravagant and hostile to the Constitution, than any which have yet been attempted. The Bill itself is of a most insidious and artful nature. The immediate creation of nine Scotch peers, and the reservation of six English peers for a necessary occasion, is of double use; to be ready for the House of Lords if wanted, and to engage three times the number in the House of Commons by hopes and promises.

To sanction this attempt, the King is induced to affect to waive some part of his prerogative; but this is merely an ostensible renunciation, unfounded in fact, or reason. I am desirous to treat of all points relating to the private affairs of His Majesty, with the utmost tenderness and caution, but I should wish to ask the House, and I think I can anticipate the answer; has any such question been upon the tapis, as no man would forgive the authors, that should put them under the necessity of voting against either side?<sup>1</sup> Are there any misfortunes, which every honest man secretly laments and bewails, and would

<sup>1</sup> He here probably alluded to the misunderstanding between the King and the Prince of Wales.

think the last of mischiefs, should they ever become the subject of public and parliamentary conversations? Can not numbers that hear me testify, from the solicitations and whispers they have met with, that there are men ready and determined to attempt these things if they had a prospect of success? If they have thought, but I hope they are mistaken in their opinion of the House, that the chief obstacle would arise in the House of Lords, where they have always been tender upon personal points, especially to any of their own body, does not this project enable them to carry any question through the House of Lords? Must not the twenty-five Scots peers accept, upon any terms, or be for ever excluded? Or will not twenty-five be found in all Scotland that will? How great will the temptation be likewise to six English, to fill the present vacancies? And shall we then, with our eyes open, take this step, which I cannot but look upon as the beginning of woe and confusion; and shall we, under these apprehensions, break through the Union, and shut up the door of honour? It certainly will have that effect; nay, the very argument advanced in its support, that it will add weight to the Commons, by keeping the rich men there, admits that it will be an exclusion.

But we are told, that His Majesty has voluntarily consented to this limitation of his prerogative. It may be true; but may not the King have been deceived? Which if it is ever to be supposed, must be admitted in this case. It is incontrovertible, that kings have been overruled by the importunity of their Ministers to remove, or to take into administration, persons who are disagreeable to them. The character of the King furnishes us also a strong proof that he has been deceived; for although it is a fact, that in Hanover, where he possesses absolute power, he never tyrannised over his subjects, or despotically exercised his authority, yet, can one instance be produced when he ever gave up a prerogative?

If the Constitution is to be amended in the House of Lords, the greatest abuses ought to be first corrected. But what is the abuse, against which this Bill so vehemently

inveighs, and which it is intended to correct? The abuse of the prerogative in creating an occasional number of peers, is a prejudice only to the Lords, it can rarely be a prejudice to the Commons, but must generally be exercised in their favour; and should it be argued, that in case of a difference between the two Houses, the King may exercise that branch of his prerogative, with a view to force the Commons to recede, we may reply, that upon a difference with the Commons, the King possesses his negative, and the exercise of that negative would be less culpable than making peers to screen himself.

But the strongest argument against the Bill is, that it will not only be a discouragement to virtue and merit, but would endanger our excellent Constitution: for as there is a due balance between the three branches of the legislature, it will destroy that balance, and consequently subvert the whole Constitution, by causing one of the three powers, which are now dependent on each other, to preponderate in the scale. The Crown is dependent upon the Commons by the power of granting money; the Commons are dependent on the Crown by the power of dissolution: the Lords will now be made independent of both.

The sixteen elective Scotch peers already admit themselves to be a dead court weight, yet the same sixteen are now to be made hereditary, and nine added to their number. These twenty-five, under the influence of corrupt Ministers, may find their account in betraying their trust; the majority of the Lords may also find their account in supporting such Ministers; but the Commons, and the Commons only, must suffer for all, and be deprived of every advantage. If the proposed measure destroys two negatives in the Crown, it gives a negative to these twenty-five united, and confers a power, superior to that of the King himself, on the head of a clan, who will have the power of recommending many. The Scotch commoners can have no other view in supporting this measure, but the expected aggrandizement of their own chiefs. It will dissolve the allegiance of the Scotch peers



who are not amongst the twenty-five, and who can never hope for the benefit of an election to be peers of parliament, and almost enact obedience from the Sovereign to the betrayers of the Constitution.

The present view of the Bill is dangerous; the view to posterity, personal and unpardonable; it will make the Lords masters of the King, according to their own confession, when they admit, that a change of administration renders a new creation of peers necessary; for by precluding the King from making peers in future, it at the same time precludes him from changing the present administration, who will naturally fill the vacancies with their own creatures; and the new peers will adhere to the First Minister, with the same zeal and unanimity as those created by Oxford adhered to him.

If when the Parliament was made septennial, the power of dissolving it before the end of seven years had been wrested from the Crown, would not such an alteration have added immense authority to the Commons? And yet, the prerogative of the Crown in dissolving Parliaments, may be, and has been, oftener abused, than the power of creating peers.

But it may be observed, that the King, for his own sake, will rarely make a great number of peers, for they, being usually created by the influence of the First Minister, soon become, upon a change of administration, a weight against the Crown; and had Queen Anne lived, the truth of this observation would have been verified in the case of most of the twelve peers made by Oxford. Let me ask, however, is the abuse of any prerogative a sufficient reason for totally annihilating that prerogative? Under that consideration, the power of dissolving Parliaments ought to be taken away, because that power has been more exercised, and more abused, than any of the other prerogatives; yet in 1641, when the King had assented to a law that disabled him from proroguing or dissolving Parliament, without the consent of both Houses, he was from that time under subjection to the Parliament, and from thence followed all the subsequent mischiefs, and

his own destruction. It may also be asked, Whether the prerogative of making peace and war has never been abused? I might here call to your recollection the Peace of Utrecht, and the present war with Spain. Yet who will presume to advise that the power of making war and peace, should be taken from the Crown?

How can the Lords expect the Commons to give their concurrence to a Bill by which they and their posterity are to be for ever excluded from the peerage? How would they themselves receive a Bill which should prevent a baron from being made a viscount, a viscount an earl, an earl a marquis, and a marquis a duke? Would they consent to limit the number of any rank of peerage? Certainly none; unless, perhaps, the dukes. If the pretence for this measure is, that it will tend to secure the freedom of Parliament, I say that there are many other steps more important and less equivocal, such as the discontinuance of bribes and pensions.

That this Bill will secure the liberty of Parliament, I totally deny; it will secure a great preponderance to the peers; it will form them into a compact impenetrable phalanx, by giving them the power to exclude, in all cases of extinction and creation, all such persons from their body, who may be obnoxious to them. In the instances we have seen of their judgment in some late cases, sufficient marks of partiality may be found to put us on our guard against the committing to them the power they would derive from this Bill, of judging the right of latent or dormant titles, when their verdict would be of such immense importance. If gentlemen will not be convinced by argument, at least, let them not shut their ears to the dreadful example of former times; let them recollect that the overweening disposition of the great barons, to aggrandize their own dignity, occasioned them to exclude the lesser barons, and to that circumstance may be fairly attributed the sanguinary wars which so long desolated the country.

## REFORM OF THE HOUSE OF LORDS

## EARL OF ROSEBERY

*House of Lords, 20 June 1884**(289 Parl. Deb., 3 s., 937 ff.)*

[LORD ROSEBERY moved for the appointment of a Select Committee. His was the first attempt at a comprehensive scheme for reform of the House.]

My Lords, I rise to ask your indulgence while I lay before you the reasons which induced me to place the motion on the paper which stands in my name. That motion is—

‘That a Select Committee be appointed to consider the best means of promoting the efficiency of this House.’

In putting this motion on the paper, I have been desirous of bringing forward not merely an academical discussion, but a practical proposition. I am quite aware that the motion itself and the form of the motion are unusual; but I can hardly think that there is anything to be said against an unusual motion, in the days in which we live, when nothing is sure to happen but the unexpected. But I will go a little further, and say that not merely is this motion unusual, but it is unprecedented; and it is on that very-ground that I would urge your Lordships to accept it to-night.

The House of Lords has never, so far as I know, in the whole of its history, appointed a committee to inquire into its own general condition. It has at times appointed committees to inquire into branches of the subject. It has appointed committees to inquire into its own judicial jurisdiction, into the state of the Representative Peerage of Ireland and Scotland, into the system of Joint Committees, and into various branches of this very large subject. But I am not aware that at any time it has ever thought

it necessary to appoint a committee to inquire into its own condition as a whole.

The House of Lords has existed, I think, about six centuries. I do not suppose that any institution has existed so long as that without reform. Of course, it may be said that that is due to its inherent and original perfection; but I do not believe that there is any institution that can afford to remain motionless, and seal itself against the varying influences of time. Are there any institutions of that antiquity which have been able to remain without amendment or modification? What institutions are they? Is it the Monarchy? Is it the Church? Is it the House of Commons? Is it the municipalities of this country? Every one of those institutions has undergone frequent and large reconstruction in the course of the six centuries to which I have alluded.

Is it something in the form of this House itself that makes it an exception? Why, this House has undergone considerable modification. Who were the Peers who originally composed it? They were mainly ecclesiastics, with a minority of the great feudal vassals of the Crown. Then came a change, when this House lost its predominance over the other House. Then they lost their feudal power; then they lost their mitred abbots, and ceased to be an ecclesiastical assembly, and became mainly a temporal assembly; then their existence was suspended under Cromwell; then they admitted parliamentary representatives from Scotland; then they admitted life representatives from Ireland; as well as—if I may so call them—rotatory ecclesiastical representatives from Ireland—ecclesiastics who came in turn from that country to represent the Church in this House; and then came, in my opinion, the greatest change of all, when the House was swamped under George III and Mr. Pitt. The extent of that great revolution is easily shown by the bare figures I am about to quote. At the Accession of George III there were 174 Peers altogether, of whom 13 were minors, and 12 Roman Catholics, leaving 149 sitting Peers. George III in the course of his long reign created 388

Peers, of which number Mr. Pitt was responsible for 140. These figures show how completely changed this House was by these creations; but there is a very curious proof, beyond these figures, of the change which it has undergone. At the first reading of the first Reform Bill in this House, of the Peers who were created before 1790, 104 supported the Bill, and only 4 voted against it, and the Bill was thrown out mainly by the Peers created by Mr. Pitt. The next change was that the House of Lords, which was a great assembly of borough-owners, lost its direct representation in the House of Commons on the passing of the first Reform Bill. The next change was in the method of voting, when they suspended the use of proxies in 1868. They lost their Irish ecclesiastical representatives in 1869; they suspended their bankrupt members in 1871; and last, and not least, they admitted three judicial Life Peers in 1876.

You may well ask, and I have no doubt some of your Lordships are asking yourselves, why, after this long recital of modifications, I have any right to say this House is in need of reform. I do it on this ground—that all these modifications were indirect and inconsequential, and that not one of them, except the change in the method of voting and the suspension of proxies, was carried out by the House itself, for the deliberate purpose of reforming its own constitution. I might say, in another sense, that, while its status has been indirectly modified, the proceedings leading thereto have never been recognised by the House itself. Not only has the House of Lords been considerably modified in the great lapse of time, but all has changed around. Many of the institutions that were coeval with it have disappeared, and all that existed at the same time have been reformed. There is a great change which has taken place in the enormous power of the House of Commons, and the enormous increase, under the various reductions of the franchise, of the constituencies which elect the House of Commons. There is also a vast increase in the population of these Islands; and last, but not least, there are—what did not

exist at the time of the inception of the House of Lords—a newspaper press, and a colonial empire. I would ask your Lordships to think of these two facts alone, without referring to any other great changes, and to consider what differences it must have made in this institution, when a newspaper press and a colonial empire have come into existence since it commenced itself. But this House has never considered its position, as a whole, since the time before the newspaper press and the colonial empire were in existence; and these two facts, I think, would go far to support me in my motion to-night. I am not, at this hour, going into the differences between the Middle Ages and the nineteenth century; but I think it is not unfair, in an argument of this sort, to indicate the changes going on around us, simply for the purpose of strengthening my motion. I think I have shown, in the remarks I have already made, a *prima facie* case why an institution of antiquity should require, if not reconstruction, if not new machinery, at least a slight readjustment, and some repair; and I venture to say that my modest proposition is little more than a request for a coat of new paint. I believe that an institution of this antiquity, however efficient and however popular it may be, cannot exist without some small occasional modification.

REFORM OF THE HOUSE OF LORDS  
*VISCOUNT BRYCE*

*House of Lords, 21 March 1921*

(44 *H.L. Deb.*, 5 s., 697 ff.)

[LORD BRYCE was Chairman of the House of Lords Reform Conference, which reported in 1918. He was probably the best instructed statesman of his time in regard to the problem.]

This is not a new task. It is fifty, or sixty, or seventy years since people have felt that this is a branch of the Constitution in which some repairs must be executed, and the task does not grow any easier by being postponed. It is harder now, I think, than it was thirty years ago. I frankly admit the immense difficulties. Nobody can have read the Reports of the different Committees and of the last Conference without feeling how great those difficulties are, but they are not difficulties of that class which calls for long and minute investigation.

The materials have been accumulated, and they now exist in a perfectly convenient form in the Reports of the various Committees and the last Conference which sat on the subject. In that Conference there were many men of wide experience and high ability, and I do not think that they desired any further materials than those which were before them; certainly, to the best of my recollection, no one suggested that we had not the use of all the materials we needed in endeavouring to arrive at a conclusion. The difficulty does not lie in investigation, and the noble Earl the Leader of the House and his Committee will not find it necessary, if I may presume to say so, to go beyond the *data* which already exist in trying to arrive at a determination. The only novelty of which I can think would consist of variations in detail of some of the plans suggested by the Committees which have dealt with the

subject, or in contriving a combination of various methods of appointing the House, which would be understood by very few, and accepted by still fewer, people. You cannot contemplate having a system too intricate and difficult for the ordinary man to follow; it would have little chance of acceptance.

The difficulty really lies not in facts to be ascertained but in balancing the arguments for and against each particular proposition. There are competing solutions, and what any Committee which deals with the matter has to do is to weigh these competing solutions against one another, and recognise the amount of importance which is to be attached to the objections to each. The problem is a double one. It is a problem of the powers which have to be given to the reconstituted House, and of the method of constituting that House. These two questions are closely inter-connected. Lord Selborne observed that there ought to be large powers. I agree with him in thinking that there is no use in having a Second Chamber unless you give it substantial powers; but it is to be remembered that the more powers you give the more popular must be the composition of the Chamber. You will not succeed in having any considerable powers allotted to a Second Chamber unless there is a considerable popular element in the composition of the Chamber, in order to make sure that it represents adequately what I may call the best deliberate, popular sentiment.

It is impossible to expect unanimity, or even any very general agreement, on a matter of this kind. It is impossible to present a scheme with which even the parental affection of its authors will be satisfied. There are some problems in constitutions, as in legislation, which admit of no satisfactory solution. The difficulties are inherent in the thing itself. It is very well to aim at perfection, but it is better not to expect it; and in this case you will certainly not attain it. The only consolation is to be found in the fact that if there is no perfect Second Chamber neither is there any perfect First Chamber. There is not a Parliament, an elected Legislature in the



world, which gives satisfaction to the people who create it. There is not a single Legislature against which charges cannot be brought that are probably just as grave as will be brought against any Second Chamber we may create. None of your Lordships can have lived for long in this world without contrasting the amount of deference and respect which is now given to elected Legislatures, and to the representative system as a whole, from that which we remember fifty or sixty years ago. The old enthusiasm and confidence which was shown by the generation which took its political theories from John Stuart Mill and his contemporaries has waned, and we must make up our minds that the framing of a Constitution and the working of representative government is a far more difficult matter than they realised.

Really the question that is before us now is not whether we shall have a perfect Second Chamber, but whether an imperfect Second Chamber is not much better than no Second Chamber at all. It is partly because there is now so much dissatisfaction with representative Legislatures that the Second Chamber is needed to supply and compensate for some of their defects. I am not speaking now with special reference to our own Parliament, which, on the whole, has retained the confidence of the people probably more than any elected Parliament in any other country. But, I think, even we in this favoured country must feel that the tasks we throw upon our House of Commons are too heavy, and that if we can find the means of relieving it of some of those tasks by creating an effective Second Chamber we shall have done a good thing for the Constitution. It may safely be said—those of you who have read the proceedings of any of these Committees will agree with this view—that the great body of opinion in every parliamentary country favours the existence of a Second Chamber. I do not know of any case in which any substantial body of opinion thinks it would be better without a Second Chamber. I do not make that proposition absolutely universal. I am aware that there are some cases in which the defects of a Second

Chamber are more felt and more dwelt upon than in other countries; but, broadly speaking, I do not think I am going too far in what I have said.

One case only I will venture to take. It is that of a country which many of us know best and whose Constitutional Government, although in form a Republic, on the whole, in its working, resembles our system more than that of any other great country. It is modelled essentially upon our own system. It is the case of France. I have never found any French statesman, or any French publicist, except, of course, among those extremists who aim at carrying revolutionary measures and desire to carry those measures with the utmost speed, who did not think that the French Second Chamber was a valuable and, indeed, an indispensable part of their Constitution. They dwell constantly upon the useful check which the Senate exercises upon measures passed in haste, or at the bidding of some temporary wave of feeling, by the popular Chamber, and they say, 'We are grateful indeed to think that we have two anchors at which to ride. If the anchor of the Second Chamber were to go, we could not answer for the consequences.'

But, perhaps, I may be permitted to indicate, with great deference to the Committee, some considerations which forced themselves upon the mind of many of us, and which will indicate the lines upon which the creation of a Second Chamber should proceed. In the first place, let me say that I agree with my noble friend Lord Selborne in thinking that the Chamber should have substantial powers. If it has not, it will not fulfil the purpose for which it is mainly created—namely, to see that the considered opinion of the country is properly ascertained—nor will it attract the class of man whom we desire to have in it. People will not care to belong to a Second Chamber of which they will not feel that it has an active work and is useful in the machinery of government. You must give it some powers if you are to attract capacity and experience to it. What I mean by saying that it must possess substantial powers is that it must not be a mere body of

revision, a mere body which taking a Bill that comes up from the other House, dots the *i*'s, crosses the *t*'s, makes drafting Amendments here and there, and puts things in a little better form. It must have power to address itself to the substance of the matter, to submit and send back Amendments to the other House which will include matters of policy as well as mere matters of wording.

I know that there is a school—I believe my noble friend Lord Haldane belongs to it—that thinks nothing is wanted beyond a mere Chamber which can subject the proposals coming from the other House to a careful examination from the technical point of view. But that will not meet the exigencies of the case. That is not what the country expects, and it does not, I think, fulfil the meaning of the pledges which were given, as my noble friend has stated, by both parties, as to the kind of Second Chamber whose creation they contemplated. I do not for a moment mean that those pledges contemplated that it is generally desired to have any Second Chamber which would not respect the declared will of the people. That conception was long ago abandoned, when your Lordships declared the principle that you would yield to the other House whenever its action has been approved at a general election. That principle goes back in our constitutional doctrine, if not so far as the Reform Act of 1832, perhaps as far as the lives of any of us here present. What we need is not a Second Chamber which will resist the declared will of the people, but one which will see that the people have proper time in which to consider a matter of gravity and to express their opinions. We do not wish for frequent general elections; and there are great difficulties about referenda, though that is a matter which deserves to be considered.

But there is such a thing as public opinion. We all know, in point of fact, what the public opinion is on most questions. We cannot measure or determine it with exactitude as the chemist is able to weigh substances, but, broadly speaking, we know when every Bill comes into the House of Commons whether it is a general expression

of the sentiment of the nation or not. We know in this House whether the country has had time to consider; we know whether it is a matter in which the country has made up its mind, or to which it is still addressing its mind. I suggest that the kind of Second Chamber we have in our mind is one which will secure time for consideration, which will conform to public opinion, but which will never venture to resist the declared and evidenced will of the people.

I need not repeat what has been stated by my noble friend Lord Selborne as to the cases that may very well arise, nor the extreme case which he put as to the way in which, under the Parliament Act, a new question might be dealt with by the House of Commons and most vital changes carried through under the provisions of the present law. All of us realise the kind of difficulty in relation to the Parliament Act which was sufficiently shown in the case of the Government of Ireland Act of 1914, which was not amended and which, therefore, required a supplementary Act which was passing through your Lordships' House at the time that war broke out.

I would submit that a Second Chamber which is to be successful and is to win the confidence of the country must not be a party body. It should not be a body composed in such a way as to contain a permanent majority governed by party feeling or subservient to party organisation. It must be a body in which every party can have representation and every type of view can be freely and fairly stated. Lastly, a Second Chamber ought to possess, if possible, the largest measure of moral authority. By moral authority I mean besides the legal authority which may be vested in it, be that greater or smaller, the influence exerted on the mind of the nation which comes from the intellectual authority of the persons who compose the Chamber, from their experience, from their record in public life and from the respect which their characters and their experience inspire. If an Assembly possesses that moral authority in large measure, its legal powers need not be quite so extensive as they might otherwise have to be.

Such a Chamber ought to have for one of its chief duties the formation of an enlightened and reasonable opinion which would react upon the popular Chamber, and which would mitigate the conflict of party. This House has a moral authority as well as the prestige, the unequalled prestige, of its long antiquity. There is no assembly in the world which can look back over so long and glorious a career as the great Council of the Nation, the *Magnum Concilium* of early Norman times, the form of which remains in this House as its oldest member. That prestige of antiquity, that moral influence which we possess, would tell still more upon people if the reports of our debates were more widely read and known. I cannot help hoping that, whatever new Chamber is constructed, every effort will be made to preserve for it both the prestige of antiquity and the moral authority which this House inherits.

I may add, perhaps, that I believe that we shall find the other House grateful to us if we can suggest some ways in which the reconstituted Second Chamber, whether through a system of Committees or otherwise, should be able to relieve the Commons of some of those duties with which that House is so heavily burdened. I join sincerely in the hope expressed by my noble friend that His Majesty's Government will realise the urgency of the matter. So favourable an opportunity as this Government now possesses of dealing with the question may not soon recur. It is one of the most urgent of all our problems, for upon its solution the safe and smooth working of the British Constitution and its administrative as well as its legislative machinery must in these anxious times depend.

## REFORM OF THE HOUSE OF LORDS

## EARL OF BIRKENHEAD

*House of Lords, 2 April 1925**(60 H.L. Deb., 5 s., 951 ff.)*

[THE debate in which this speech was made was initiated by the Duke of Sutherland. The Ministry agreed that the subject was important and called for action; but Lord Birkenhead's proposals were his own and not those of the Ministry.]

In the first place, I would make it clear that I think the principal weakness of this House is to be found in our numbers. I believe that there are no fewer than seven hundred of your Lordships who are entitled to attend the sittings of this House. Of those seven hundred I have been here long enough to say with confidence that the day-to-day work of the House is really done by about two hundred peers. Of this I am sure, that no circumstance has done more to impair the reputation and the efficiency in the public esteem of the House as at present constituted than that there are so large a number who make no pretence at all of discharging their parliamentary duties.

Equally, you will not find often, selected in any rank of life, seven hundred men holding office by descent from generation to generation of whom all will bear an unimpeached moral character. You may be so fortunate in one generation, but in another generation you would be less fortunate. It does not recommend itself, in my opinion, either to the common sense or to the conscience of the citizens of this country, taken as a whole, that there should be fifteen or twenty men, possibly with a criminal decision against them in the Courts, possibly with a history of bankruptcy, very often with some verdict of a civil court which has unquestionably involved, in the

opinion of most people, a moral taint, who, if a grave issue does arise, should be constitutionally entitled to come here and pronounce upon it as legislators. It is not right. It is not defensible, and in my judgment the circumstance that it has been possible to point to this House as being unpurged is one which has injured it almost more in the public esteem than any charge that has been brought against it.

I must add this. Our numbers have been, shall I say most pleasantly enlarged, in the last fifteen years. The noble Earl, Lord Oxford, was most hospitable in the invitations which he extended before, to our great comfort, he joined us in this House. His successor, Mr. Lloyd George, greatly encouraged by the general desire of the Liberal Party to become members of this Assembly, added with a hand even more prodigal to the membership of this House. In fact, it is due, I think, almost entirely to the activities of these two great statesmen that in this House almost alone in the world we are able to produce sitting upon our Benches so many well-known Liberals.

How are we to deal with this problem? I confess I would deal with it somewhat as follows. The precise number is unimportant, whether one calls it  $x$  or gives a term of hundreds. From seven hundred I would reduce the number of this House to about three hundred. The Bryce Committee produced a very ambitious scheme which had every conceivable advantage, except that nobody wanted and nobody would support it. They greatly reduced the numbers. I think they went too far. Supposing the numbers in this House were in the region of three hundred, that would be a workable Assembly. It would be an Assembly which, having regard to the precautionary suggestions I am about to make, would be likely, in my judgment, to assemble for the day-to-day discharge of their parliamentary duties.

The next question obviously is this. If your numbers are somewhere in the neighbourhood of three hundred, who are you to determine your method of exclusion, and,

conversely, upon what principles will you settle the standard of inclusion? A picturesque member of this House, remembered by all your Lordships, I think, with interest and by many with affection, Lord Willoughby de Broke, never failed to take part in these debates. I can still see him rising from the Bench where the noble Earl now sits, making it quite plain that no scheme which he had ever heard adumbrated on this subject satisfied him that he would be among the survivors, and that until a scheme was produced which guaranteed him that he would survive where all his long line had sat before him in this House, he was an unconvertible enemy of any form of reform. I can still hear him declaiming, as many of your Lordships can, the virtues of heredity in foxhounds and hunters. That is a type of opinion which, though it is still, as the Lord Chancellor said a few days ago, represented in this House, perhaps not weakly represented, is hardly so picturesquely represented, and is not in my judgment likely to survive.

How then are these numbers to be selected? The first suggestion I would make is this. There will always be in this House a number of men whom, making the best rough examination I can, I have placed somewhere in the neighbourhood of 120 who have occupied either high political or high administrative, or high military or naval situations in the service of the State. Let us for the sake of arriving at a figure assume that about 120 would be found at the moment when we begin to contemplate our reform. I would certainly so define the qualifications that all those 120 would be automatically included. Then I shall be asked, how about the other 180? I am not in favour of the fanciful or ambitious proposals which are put forward in certain quarters, though I agree that all these must be considered. My proposal is a modest one. It has the advantage that I think it conceivably—I do not put it higher than that—is one which a Government might be persuaded to bring forward, and I think it is one, though I say this very doubtfully, which your Lordships might be persuaded to adopt. It is this: that the



other 180 should be co-opted from among your Lordships by the members of this House. That gives me a certain figure.

Now I shall be asked: How is this proposal of yours to satisfy that purpose, which you declare to be of the highest consequence, of enabling the Labour Government of the future to be represented in this House? I deal with that matter with two suggestions, the merits of which must be, I think, at some time or other considered and decided upon. In the first place, I would undoubtedly have a nominated element. I will make a suggestion in relation to numbers. The nominated element, who might be known as Lords of Parliament, without of course acquiring an hereditary rank, would be nominated by the Prime Minister of the day. The numbers may reasonably be made the subject of discussion, and of compromise.

Let me make a supposition, for the sake of argument—and here I leave my figure of three hundred, because I do not wish to be involved in too precise a relation to a particular figure. Supposing the Socialist or Labour Prime Minister, a year ago, when he unexpectedly had to take office, and had to face his constitutional difficulties in this House, had under our Constitution possessed the power that so long as his Government lasted or for some alternative period—there are other methods, which I do not stop to examine here—had the power of nominating fifty members of this House to be Lords of Parliament; observe what would have happened. In the first place, it would have been possible for him to send to this House—I say this without any disrespect to noble Lords—really vital, characteristic mouthpieces of the trades union movement. It would be an enormous advantage to us that we should meet here and debate on the floor of the House with the men who sway great masses of their countrymen in the constituencies, and whose arguments are really the arguments that count. We should not shrink from attempting to answer those arguments in this place.

Conceive what the strength of a body so constituted would be. In the first place, it would be a small body,

numerically compact. We should have 120 men of the highest distinction, who had served the State in high administrative or other capacities. We should have a further number, selected by the decision of the whole body of the Peers, and that method of selection alone would be a guarantee that they would be representative of your Lordships' House, and of all that in history it stands for, and will stand for in the history of this country in the future. I am only telling your Lordships, whether it be regarded or whether it be not regarded, the advice which I myself should certainly give to any Government which did me the honour of consulting me. I reject absolutely the idea that you are to take immense constituencies, and that your Lordships and myself, at our time of life, are to begin to address ourselves to constituencies which I suppose would consist, if our numbers were sufficiently truncated, of somewhere in the neighbourhood of 300,000 or 400,000 people. No, I do not believe that, on the whole, it is the desire of the people of this country that they should have two kinds of competitive, democratic, election-produced Chambers. I am certain that jealousy and dispute would be the result, which would certainly not be an improvement upon the present state of affairs.

Then it is sometimes said that it might be possible that a method of indirect election should be adopted, that your Lordships, in other words, instead of sitting here because you are the sons of your fathers, would be sitting here because you had attracted the favourable attention of some county council. This recommendation, I confess, has never appealed to me at all; indeed, a noble Lord once observed, I think with perfect truth, that he would far rather go to the Jockey Club to select the members of your Lordships' House, and was confident that they would, on the whole, make a wiser selection. Without making the matter so comparative, I would only say that county councils were never brought into being to discharge functions of that kind. It is wholly alien to their character, and I am certain it would tend to infect them, wholly unnecessarily, with the virus of general party

politics, and that it would, in the end, produce a Chamber in which nobody would have the slightest confidence, and at which everybody would justly laugh as being created by a number of esteemed country people who were brought together to fulfil quite different administrative functions. If you dismiss the proposal for direct election at the hands of great constituencies, and if you dismiss the thoroughly artificial, and in my judgment unworkable, proposal of election by means of either county councils or comparable bodies, you are, in my humble judgment, brought back to some suggestion at least of the general character of that which I have made.

I shall be asked next: If you have a body like this so constituted, and one which will be immensely strengthened in public esteem, in the regard and the confidence of the nation, with what powers do you recommend that it shall be equipped? Here I wish to make it still more plain that I speak for myself, and for myself alone, not indeed, so far as I know, in conflict with any colleague, because I have made it plain that these matters have neither been discussed nor composed, but I am speaking merely with the hope of contributing as others of your Lordships have done, something that may at least be made a basis of discussion, and which shows the way in which an individual mind, for what it is worth, is moving. With that reservation then, I make it quite plain that I do not think it would be possible, even with a Second Chamber so reconstituted, to attempt to interfere with the main purpose and effect of the Parliament Act, greatly as I myself detested and resented that Act and mischievous and artificial as I think its conception was. But history has moved, years have passed. We in this House acquiesced, rightly or wrongly, in a conclusion which, at our risk, we could have disputed. We did not dispute it, and so far as my individual advice is concerned, I should not advise your Lordships at this period of our history, and after the political developments which have taken place during the last few years, to re-open this controversy at a moment which in my judgment is less promising to its successful

solution than the occasion when I and many of my friends most deeply urged this House to challenge and test the menaces by which they were induced to assent to this legislation.

What then in relation to powers is attainable? In the first place, as the Lord Chancellor pointed out, it is most urgently to be desired that a change should be made in the method by which Bills are certified as Money Bills. The Lord Chancellor made it plain that he, and I think he was speaking for every member of the Government, paid the most perfect tribute to the impartiality of Mr. Speaker, whoever at the moment Mr. Speaker may be. But this House has justly resented that the *ipse dixit* of the other House should decide without the possibility of any discussion what Bill is a Money Bill, and should so destroy any possibility that this House could discharge, in relation to that matter, its function as a revising House. I believe that a general measure of assent could be produced for a modification, on lines which I will shortly state, of this anomalous and intolerable system. I think that a committee of equal numbers of members of the House of Commons and House of Lords, presided over by Mr. Speaker, might in all disputed cases reach a conclusion as to whether or not a Bill was affected with the character of a Money Bill.

It may be said that if you have six members of the House of Commons and six members of the House of Lords and you have Mr. Speaker as the Chairman, that you are, in fact, still leaving the final decision in the hands of Mr. Speaker. But things in practice among reasonable and honest men do not work out in that way. If you have a discussion between six reasonable members of this House and six reasonable members of the other House you would not have—I would stake any reputation I may have for political judgment upon it—the members of the House of Lords agreeing with one another, nor the members of the House of Commons agreeing with each other. And you would be sure that Mr. Speaker would have the advantage of hearing all the arguments and

would not be left, therefore, to his own unassisted resources in deciding this important point. I am encouraged to believe that a reform of that kind would be acceptable because it was, in fact, accepted by all the Liberal elements which supported the Coalition at the time this matter was last under discussion. It is inherently just in itself; it has a parliamentary history which affords no small degree of encouragement, and it would be an extremely valuable reform.

In the next place, it seems plain that the Parliament Act requires amendment in one material point. As things stand at present we have not the slightest guarantee that a Socialist Government coming into power to-morrow might not use the terms of the Parliament Act itself to destroy even the vestige of liberty that is left to us under that Statute. It was one of the most amazing omissions, if it was inadvertently omitted from the Act, which has hitherto been pointed out. One thing surely is indispensable, and it is that we should be the jealous custodians of such liberty as still remains, and it should be provided in any reform proposals that no alteration of the Parliament Act itself, with the little security and independence that were left to us, should take place unless there had been an explicit general election upon that issue.

Further, I am of opinion that we should adopt a reform which nearly every great constitutional system but our own has admitted. We ought, I think, to allow Ministers the right of audience in both Houses. Conceive the advantage it would be to us in existing circumstances, or rather in circumstances through which we have passed and which may easily be recurrent. What is of real consequence, leaving the shadow for the substance, is that this House should maintain its vital contact and traditional influence with public affairs. How can we best do that? Surely it is by having those here for the purposes of discussion, and in a ministerial capacity, who, speaking with high responsibility, can justify their policy, so that having heard the justification and defence we can either approve or resist it. It is not a good system, admirable

as it is—these functions have been discharged by generations of noble Lords in this House—that a Department should be represented upon the Government Bench by a noble Lord who has not actually any administrative responsibility for the affairs of that Department. It is not really a system that can be satisfactory to those noble Lords who desire information.

I shall be asked as to the practical difficulties in the way of a change of this kind. In my judgment, they are not very considerable, certainly not invincible; and it is perhaps sufficient to say that in France, and in many other countries, in most of the constitutional systems which we have had occasion to study, you will find that the practical difficulties which do exist have been successfully surmounted. In my judgment it would be of equal advantage if from time to time those who are Ministers and in charge of great Departments should have an opportunity, when their policy is being disputed in another place, of leaving this House and making their views plain there. Both this House and the House of Commons would gain.

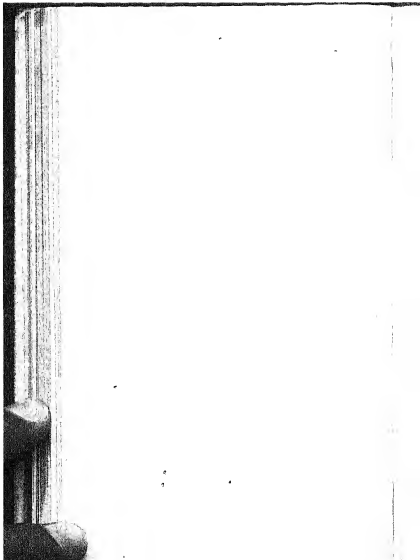
I come to almost the last point in relation to which I desire to offer a suggestion, and that is that there should, on occasions of differences which have been found insoluble by existing methods, be a Joint Session of the two Houses, in numbers to be precisely determined but in relation to which it is obvious the numerical representation of this House would be smaller than that of the House of Commons. And I ought, I think, to make it plain that this suggestion is not by any means a new one. It was made more than once in 1910, and made authoritatively. It was made in the days of the Cabinet Committee, appointed by the Coalition, over which my noble and lamented friend Lord Curzon presided, and it has been examined by many of those who have applied their minds to these questions.

I am attracted by the proposal because, in days when parliamentary government and parliamentary institutions are disparaged and assailed, I value everything which adds to the dignity, the appearance, the ceremony of

Parliament, and I can conceive nothing more stirring to the imagination, at a time when great issues have disclosed themselves between the House of Lords and the House of Commons, than that both these two bodies, which have been so greatly contributory to the political fortunes of this country in the past, should meet together, with the responsibility that an occasion so striking and conspicuous would surely bring, to see if any method founded upon reason or compromise could not be adopted to settle the particular controversy that had arisen between them.

IV  
HOUSE OF LORDS  
RELATIONS WITH HOUSE OF COMMONS





THE HOUSE OF LORDS AS A CHECK ON  
LEGISLATION

LORD LYNDBURST

*House of Lords, 27 April 1858*

(149 *Parl. Deb.*, 3 s., 1769 ff.)

[DURING the Committee stage of a Bill to enable Jews to take the oath as members of Parliament, Lord Lyndhurst described concisely the proper relation between the two Houses in regard to legislation.]

It is hardly necessary for me to call to your Lordships' recollection that in many successive Parliaments measures having the same object as the present have passed through the other House with great and increasing majorities, and on no occasion with a greater majority than when the present Bill was passed. Contrast that with what has taken place in this House, and I beg to call your Lordships' attention to the importance of the fact in this respect.

I have told you that Bills for the admission of the Jews have been passed in the other House with great and increasing majorities; but in this House those measures have been from time to time rejected by very small and inconsiderable majorities; in no instance being more than one-tenth of the number of persons who were called on to vote on the subject. My noble and learned Friend, the Lord Chancellor [Lord Chelmsford] will not pay much attention to mere numbers on such a question. But your Lordships will also bear in mind that men of the highest character and of the most prominent position, of great knowledge and research, of the warmest and most ardent religious feelings have been found in those minorities—even right reverend and most reverend prelates have supported those Bills in this House, and I believe that on one occasion also my noble Friend near me [the Earl of

Derby]. All these are matters for your Lordships' consideration, because we are not to be governed entirely by the discussion of this evening, during which I feel I can scarcely carry on an equal combat with my noble and learned Friend; but I refer to those facts to call back your Lordships' recollection to past circumstances in order that you may weigh them before you come to a decision on this very important question.

Our legislature is a species of progressive machine; it consists of three independent powers; and, if each power adhere rigidly to its own opinion, the machinery of legislation would on many occasions come to a standstill; it is by mutual forbearance and concession that the machine practically works out the great objects of the Constitution. I desire to impress this consideration most strongly upon your Lordships, and I have on more than one occasion expressed my opinion with respect to the particular position and duty of the House of Lords. It is part of our duty to originate legislation, but it is also a most important part of our duty to check the inconsiderate, rash, hasty, and undigested legislation of the other House; to give time for consideration; and for consulting, and perhaps modifying the opinions of the constituencies; but I never understood, nor could such a principle be acted upon, that we were to make a firm, determined, and persevering stand against the opinion of the other House of Parliament, when that opinion is backed by the opinion of the people, and least of all, on questions affecting, in a certain degree, the constitution of that House and popular rights. If we do make such a stand, we ought to take care that we stand on a rock and we ought to be cautious not to place ourselves in such a position when we have nothing to rely on but the fragment of an Act of Parliament diverted from its original purpose to one it was never intended to apply to.

## THE HOUSE OF LORDS AND FINANCIAL MEASURES

### LORD CHELMSFORD

*House of Lords, 21 May 1860*

(158 *Parl. Deb.*, 3 s., 1504 ff.)

[THIS speech was made during the debate on the Second Reading of the Paper Duty Repeal Bill. Lord Chelmsford discussed the constitutional propriety of the rejection of financial measures sent up to the House of Lords by the House of Commons. The Bill under consideration was rejected by the House of Lords. This action led to the moving of Resolutions in the House of Commons by Lord Palmerston (the Prime Minister)—see note on No. 28 and cf. Nos. 32 to 35.]

My Lords, I undoubtedly thought, after the admirable speech of my noble and learned Friend [Earl Granville] at the commencement of the evening, that the constitutional part of this question was entirely settled; and I do not understand, though I have listened with the greatest attention to my noble and learned Friend [Lord Cranworth], whether he means to deny the principles upon which the constitutional proposition has been established, or whether he merely means to submit to your Lordships that, because it would be unprecedented to interfere in the way proposed, therefore it would be impolitic and inexpedient for you to do so.

My noble and learned Friend does not deny the power of the House to refuse its assent to this Bill. We have heard no denial of that proposition, and none, indeed, can be offered; because it stands to reason that, if your assent is required before this Bill can become law, it necessarily follows that you must have the power of withholding your assent—this, in other words, being the power of rejecting. We are all agreed as to the privileges

of the two Houses of Parliament with respect to Money Bills. We are agreed, in reference to Bills of supply and taxation, that your Lordships have, at all events, the power to reject them. You have to a certain extent admitted that you have no power to alter Money Bills. A Resolution of the Commons to that effect was passed in 1678; your Lordships, however, have never absolutely admitted that you have no power to alter Money Bills, though you have acquiesced to a certain extent in that Resolution, and have taken care not to exercise that which may still be the privilege of your Lordships' House; or, if you have exercised it, the other House has taken care to assert its own privileges in such a manner as not to violate the constitutional rights of the other House of Parliament.

There are many instances since 1678, in which your Lordships have made Amendments in Money Bills. Those Bills have then gone down to the Commons, and supposing the Commons have not thought those Amendments improper, they have preserved their privileges and asserted their dignity by refusing to assent to those Amendments, but have introduced another Bill embodying the Amendments proposed by the Lords. In that way the privileges of both Houses of Parliament have been maintained.

I understood my noble and learned Friend who has just spoken [Lord Cranworth] not to deny the principles asserted by Lord Lyndhurst; but he says that the course which the House is called on to pursue is entirely unprecedented, and dangerous, therefore, to be adopted. My noble and learned Friend stated that Lord Lyndhurst had treated the subject with great dexterity by stating that he would mention a few precedents, and that he had many others to which he would not refer—insinuating thereby that that noble and learned Lord had in reality brought forward all the precedents he had been able to discover; and my noble and learned Friend then proceeded to maintain that the precedents which had been brought before the House are not at all like the present case. I,

however, ask whether they are cases of Money Bills or not.

Lord Lyndhurst, however, gave us two instances, not of Bills imposing taxation, but of Bills for the relief of taxation, which were rejected by your Lordships' House. It has been stated that those Bills were rejected partly for political and partly for economic reasons. But what does it signify what were the reasons for rejecting them? If they were rejected by your Lordships for economical reasons, that is a proof that in dealing with Money Bills this House exercised a power which would hardly be contended for by those who say that your Lordships have no right to interfere in these matters.

The precedent of 1811, which my noble and learned Friend tries to disable, he has, I think, found too strong for him. That was the case both of the remission and imposition of taxation; and on that occasion this House rejected the Bill. The Commons, instead of making any complaint that there had been an infringement of their privileges, silently introduced another Bill, and that Bill became law.

My noble and learned Friend appears to have been reading the journals of the day, and to have adopted the argument I saw in the leading article of one of them, to the effect that it is the duty of the Commons (as undoubtedly it is) to provide the ways and means for the supply of the year, and that this House has no right to interfere at all with those ways and means, but is bound to adopt them. Now, suppose one of the ways and means devised by the Commons should be a tax highly objectionable and known to be one which the people at large regard with no favour or satisfaction; though it is admitted that the assent of this House is required for the Bill, and, though it is equally admitted that this House has the power not to assent to it, yet we are told that we must not touch the ways and means provided by the Commons. So that, in the same breath, we are told that we have the power to express concurrence or dissent, and that we have no such power. Is it possible that such an argument can

prevail with your Lordships, and yet what other arguments have been advanced by the noble and learned Lord?

But it is admitted that we have the power and the right to dissent from a Money Bill. If, then, your Lordships have the power and the right, you have also the corresponding duty to decide upon this Bill; the one cannot be without the other. And if, as I believe, not one in a thousand of the people, if polled, would vote in favour of the remission of this tax while the tea and sugar duties are maintained, then I ask your Lordships whether, having the power and the right, you are not bound to reject this Bill, seeing that the taking off of this tax will render necessary an increase of the income tax and the maintenance of the duties on tea and sugar. If we have the right, what better opportunity can there be for its exercise than the present? If we forbore to exercise it now, when there is a necessity for such a step, then indeed it will be said that we have established our inability ever to exercise it.

# THE HOUSE OF LORDS AND FINANCIAL MEASURES

## LORD PALMERSTON

*House of Commons, 5 July 1860*

(159 *Parl. Deb.*, 3 s., 1384 ff.)

[SEE note on No. 27 and cf. Nos. 32 to 35. Lord Palmerston (Prime Minister) did not wish to protest so vigorously against the rejection of the Paper Duty Repeal Bill by the House of Lords that there should be serious trouble between the two Houses. He is alleged to have remarked: 'I mean to tell them [the House of Lords] that it was a very good joke for once, but they must not give it to us again.' Gladstone, the Chancellor of the Exchequer, would have preferred stronger action. In the following year all financial measures were consolidated in one Bill; and this device was more effective than vigorous protests. The Resolutions moved by Lord Palmerston were as follows:

1. That the right of granting Aids and Supplies to the Crown is in the Commons alone, as an essential part of their Constitution; and the limitation of all such Grants, as to the matter, manner, measure, and time is only in them.
2. That, although the Lords have exercised the power of rejecting Bills of several descriptions relating to Taxation by negating the whole, yet the exercise of that power by them has not been frequent, and is justly regarded by this House with peculiar jealousy, as affecting the right of the Commons to grant the Supplies and to provide the Ways and Means for the Service of the year.
3. That, to guard for the future against an undue exercise of that power by the Lords, and to secure to the Commons their rightful control over Taxation and



Supply, this House has in its own hands the power so to impose and remit Taxes, and to frame Bills of Supply, that the right of the Commons as to the matter, manner, measure, and time, may be maintained inviolate.]

Sir, I rise upon an occasion which undoubtedly will rank as one of the first importance among those which have arisen in regard to our form of Parliamentary proceedings, because there can, in my opinion, be nothing more important to this House; there can be nothing, I think, of greater importance to the country, than those questions which relate to the respective rights, privileges, and practices of the Houses of Parliament. . . .

I cannot here allude to anything that may have passed in debate in the House of Lords. That is not consistent with our Orders; that is not our function; but looking broadly at the matter I do not believe that, if under ordinary circumstances this House had determined that a certain tax ought to be repealed, and had sent a Bill to the House of Lords for that purpose, that House would have rejected such a measure. If it had been shown that there was an excess of taxation which pressed heavily upon certain interests of the country, that the revenue raised by it was unnecessary, or that a better arrangement might be made by transferring the burden to some other interest that could bear it better, I do not believe, judging from what has happened on many former occasions, that the Lords would have taken the steps which they recently took. We know, Sir, what an immense amount of taxation has been repealed by the two Houses of Parliament since the end of the war in 1815, and, in no one instance that I am aware of, did the Lords dissent from the decision of the Commons as to the relief of the country from burdens which were thought to be no longer necessary. Therefore, I cannot bring myself to believe that the Lords in the steps which they have now taken, intended to enter on a course, their progress in which, if they did enter upon it, it would be the duty of this House to resist by every

constitutional and legal means which are at our command. I mean that I do not believe the House of Lords intended to take the first step towards a partnership with this House in arranging the Budget of the year, in fixing the measure, the manner, the time, or the amount of Aids and Supplies, which it belongs solely and exclusively to this House to determine. If we believed that such was their intention, and that this is only the first step in such a course, then, Sir, I say that it would become us to resolve in our own minds to take those measures which are in our power to defeat and frustrate it; but, until we have some more decided proof that such an intention was entertained, I would adjure the House to content itself with the record of that declaration which is contained in the Resolutions, which I have had the honour to lay upon the Table, and not, without being driven to it as a matter of necessity, to enter upon a formal conflict with the other House of Parliament.

But, Sir, I ask—have the Lords received no encouragement from this House to take this particular step? The Bill for repealing the Excise Duties on Paper was brought into this House under circumstances which were materially and notoriously altered when its rejection in the House of Lords took place, and although its Second Reading was carried by a majority of 53, its Third Reading was passed by a majority of only 9.

Well, Sir, if it had gone to the Lords with an equally large majority upon the Third Reading as upon the Second, I do not believe that they would have done otherwise than pass it; but they saw—although they may not have known it officially, it was a matter of public notoriety when our proceedings were laid upon their Table—they saw that, during the interval between the Second and Third Reading, the opinion of this House appeared to have undergone considerable alteration. The majority of 53 upon the Second Reading was reduced to 9 upon the Third Reading. Were not the Lords, therefore, entitled to think that the opinion of this House upon this question was not so strong as it had been? . . .

Well, Sir, stating, as I trust, the case impartially upon both sides, while on the one hand I think the House would have been right to have resisted any attempt on the part of the Lords to enter into a partnership with us with a view to determine the financial arrangements of the year—while I think that by so doing they would be stepping out of their province and departing from the line of constitutional right which the history of the country has assigned them—yet on the other hand, if it can be believed, and I am led myself to think so, that they were not actuated on this occasion by any such intention, but by motives of policy dependent upon the circumstances of the moment, I think it would not be wise for this House to enter into a conflict with the House of Lords upon a ground which may not really exist, but to satisfy themselves with a declaration of what are their own constitutional powers and privileges, reserving to themselves the exercise of that power, which they have within their own means if any case should arise, if that opinion which I have expressed should not be confirmed; and if a deliberate course should be pursued of changing the whole system of constitutional proceedings in regard to taxation—I say, Sir, that, if that should arise, we will determine to use those means which I am convinced we possess and which are quite sufficient to restrain or to prevent any such inroads on the constitutional privileges of this House. . . .

I think, Sir, it would not have been becoming or even decent upon an occasion on which there was an appearance at all events of an intention to invade our functions—it would not have been right or decent for this House to have remained absolutely silent. Such silence might have been construed into a yielding of rights and functions which we mean steadily to maintain in our own hands. On the other hand, Sir, I think we should not have raised ourselves in public estimation: I do not think we should have done anything towards maintaining effectively those rights and functions which belong to us, if we had thrown into these Resolutions anything likely to prove the com-

mencement of hostilities with the other branch of the Legislature. . . . I am convinced in my own mind that these Resolutions going forth from this House, will be a sufficient warning to guard against any occurrence in future to which we might fairly take exception. We are not prepared to undo that which has been done. Perhaps in ordinary times, under ordinary circumstances, we might have advised this House to pass again the Bill which was rejected by the Lords, to return it *toties quoties*, if you will; to suspend all other business till it was passed, and by the exercise of those means which we have in our own hands, to render it necessary for the Lords to give way. But, Sir, the circumstances of the moment do not render that course of action desirable; and that being so, I say that, unless we felt at liberty to return the Bill in some shape or other, and to insist in the present session upon the repeal of the paper duty, we ought to take the course which it is my duty to recommend for adoption.

THE HOUSE OF LORDS AS A CHECK ON  
LEGISLATION

MARQUIS OF SALISBURY

*House of Lords, 17 June 1869*

(197 *Parl. Deb.*, 3 s., 83 ff.)

[SPEAKING in the debate on the Second Reading of the Irish Church Bill, Lord Salisbury emphasized the importance of the influence of public opinion in considering the relation between the two Houses; and he advised that the Bill should be passed. Cf. Nos. 4, 9, and 10.]

It has been represented that, in admitting it to be the duty of this House to sustain the deliberate, the well-ascertained opinion of the nation, we thereby express our subordination to the House of Commons, and make ourselves merely an echo of the decisions of that House. In my belief no conclusion could be more absolutely inconsequential. If we do merely echo the House of Commons, the sooner we disappear the better. The object of the existence of a second House of Parliament is to supply the omissions and correct the defects which occur in the proceedings of the first.

But it is perfectly true that there may be occasions in our history in which the decision of the House of Commons and the decision of the nation must be taken as practically the same. In ninety-nine cases out of 100 the House of Commons is theoretically the representative of the nation, but is only so in theory. The constitutional theory has no corresponding basis in fact; because in ninety-nine cases out of 100 the nation, as a whole, takes no interest in our politics, but amuses itself and pursues its usual avocations allowing the political storm to rage without taking any interest in it. In all these cases I make no distinction—absolutely none—between the prerogative of the House of Commons and the House of Lords.

Again, there is a class of cases small in number, and varying in kind, in which the nation must be called into council and must decide the policy of the Government. It may be that the House of Commons in determining the opinion of the nation is wrong; and if there are grounds for entertaining that belief, it is always open to this House, and indeed it is the duty of this House, to insist that the nation shall be consulted, and that one House without the support of the nation shall not be allowed to domineer over the other. In each case it is a matter of feeling and of judgment. We must decide by all we see around us and by events that are passing. We must decide—each for himself, upon our consciences and to the best of our judgment, in the exercise of that tremendous responsibility which at such a time each Member of this House bears—whether the House of Commons does or does not represent the full, the deliberate, the sustained convictions of the body of the nation. But when once we have come to the conclusion from all the circumstances of the case that the House of Commons is at one with the nation, it appears to me that—save in some very exceptional cases, save in the highest cases of morality—in those cases in which a man would not set his hand to a certain proposition, though a revolution should follow from his refusal—it appears to me that the vocation of this House has passed away, that it must devolve the responsibility upon the nation, and may fairly accept the conclusion at which the nation has arrived.

My Lords, I cannot think that in thus stepping aside we are abdicating our duty, or are showing that want of courage with which the right rev. Prelate charged us the other night. It is no courage, it is no dignity to withstand the real opinion of the nation. All that you are doing thereby is to delay an inevitable issue—for all history teaches us that no nation was ever thus induced to revoke its decision—and to invite besides a period of disturbance, discontent, and possibly of worse than discontent.

Now, I am jealous of any language which may seem to

trench on the prerogative of this House, and I have tried to guard my words against any interpretation which should seem to imply that, in the ordinary course of legislation, there is any inferiority between one House of Parliament and the other. But one of the rare occasions to which I have referred has now occurred. The opinion of Scotland and Ireland, and I may add, of Wales is passionately in favour of this measure of disestablishment. England, though more doubtfully and languidly, is also in favour of the same measure. And looking at these facts, and at the general current of opinion; looking at all quarters of the political horizon, and seeing succour in none; seeing that the opinion of literary men is against you; seeing that the mass of religious opinion among Dissenters and Catholics is against you; seeing that what the Foreign Secretary laid so much stress on last year—the opinion of foreigners—is also against you, though I take this opinion not as worth much as a guide to our conduct, but as worth a good deal as indicating the tide of opinion—seeing that nowhere is there any appearance of any movement that can reverse the decision of the nation, save in assemblages of which the power has been tried and has been so often found wanting—on all these grounds, my Lords, I can conscientiously come to no other conclusion than that the nation has decided against Protestant ascendancy in Ireland, and that this House would not be doing its duty if it opposed itself further against the will of the nation.

## THE HOUSE OF LORDS AS A CHECK ON LEGISLATION

SIR HENRY CAMPBELL-BANNERMAN

*House of Commons, 20 December 1906*

*(167 Parl. Deb., 4 s., 1739 ff.)*

[THE Prime Minister, after the rejection of his Ministry's Education Bill by the House of Lords, protested against the attitude involved in that rejection. Cf. Nos. 4, 9, and 10.]

This education question has been before the country since 1902, and even earlier. It has been discussed and re-discussed. The Act of 1902 has been the cause of intense bitterness and dissatisfaction. The grievance created by it and the flaws in its administrative structure in many respects are such that there can be no peace, no settlement, no ordered progress in the work of education until the law is altered from its present condition. No one denies it. No one denies that that was the opinion which helped to return the great majority sent by the constituencies this time last year. No one denies the strength of the reflection of that opinion in this House. Who could deny it, when these very Amendments were returned to the House of Lords but a few days ago by a majority of 309? Well, Sir, at the bidding of a party which was condemned at the general election, condemned as no party was ever condemned before, the House of Lords has obliterated all this. I desire to speak with perfect moderation and calmness, but it is difficult to reconcile such action on the part of the other House with that calm and impartial revision of hasty legislation which is assumed to be the greatest merit of that Assembly. Perhaps it is even harder to see how that action justifies the claim that they are the true interpreters of the feeling and desires of the people of this country. But even if it were so,



what is the good of maintaining a representative system? It is not as if this House of Commons were old, stale, and worn out; if that were so, there would be some reason we could understand in the argument; but there is no reason in the argument to-day. It is plainly intolerable, Sir, that a Second Chamber should, while one party in the State is in power, be its willing servant, and when that party has received an unmistakable and emphatic condemnation by the country, the House of Lords should then be able to neutralise, thwart, and distort the policy which the electors have approved. That is the state of things that for the moment—for the nonce—we must submit to. A settlement of this grave question of education has been prevented, and for that calamity we know, and the country knows, upon whom the responsibility lies. But, Sir, the resources of the British Constitution are not wholly exhausted, the resources of the House of Commons are not exhausted, and I say with conviction that a way must be found, a way will be found, by which the will of the people expressed through their elected representatives in this House will be made to prevail.

# THE HOUSE OF LORDS AS A CHECK ON LEGISLATION

SIR HENRY CAMPBELL-BANNERMAN

*House of Commons, 24 June 1907*

(176 *Parl. Deb.*, 4 s., 910 ff.)

[As a result of the rejection by the House of Lords of measures proposed by his Ministry the Prime Minister moved in the House of Commons: 'That, in order to give effect to the will of the people as expressed by their elected representatives, it is necessary that the power of the other House to alter or reject Bills passed by this House should be so restricted by law that within the limits of a single Parliament the final decision of the Commons shall prevail.']

My motion affirms the predominance of the House of Commons as the representative House of Parliament, and I submit that in spirit and in fact that is a strictly true constitutional proposition. I may claim for it, up to a point, the adhesion of the party opposite and of the House of Lords itself. The supremacy of the people is admitted in theory even by the House of Lords. It is admitted that the will of the people—that will upon which the poet tells us our Constitution is broad-based—is in the long run entitled to prevail. It is admitted even by those whose natural leanings and proclivities would lead them to a very restricted order of representative institutions. To that extent, therefore, we are seemingly at one. How, then, is that will of the people to be got at and ascertained unless you take the view of the elective House as expressing it? The supremacy of the people in legislation implies, in this country at any rate, the authority of the Commons. The party for which I speak has never swerved from that position, and unless you are going to fall back upon some foreign method, such as the

*referendum* or the mandate or the plebiscite, or some other way of getting behind the backs of the elected to the electors themselves, such as was advised by both the first and third Napoleon—unless that is the example you are going to follow, then there is no course open but to recognise ungrudgingly the authority which resides in this House, and to accept the views of the nation as represented in its great interests within these walls. The Resolution embodies, therefore, a principle the logic of which at any rate is accepted by both parties and both Houses—the principle of the predominance of the House of Commons.

But let us be quite clear as to what we mean by predominance, and especially what we mean by the ultimate prevalence of the House of Commons. We do not on this side of the House mean an abstract, a deferred supremacy; that is not what we mean by the supremacy of the House of Commons. We do not mean a supremacy that comes into play after one or two or more appeals to the country, before which a determined resistance of the other House will give way. That is not what we mean by the supremacy of the House of Commons. That arrangement does not in the least fulfil the requirements of the Constitution. Where we differ, therefore, is as to the point at which the authority of this House becomes effective. But, at any rate, let us be quite clear about this, that the House of Commons is acknowledged on all hands, with certain reservations in the House of Lords, but without reservation at all, so far as I am aware, in the writings of any high constitutional authority, as the final court in which the will of the nation is declared. I do not base my argument upon the admissions or statements of those writers to whom I have referred, or on any authorities whatsoever. We do not require to do so. The principle which forms the core of our Resolution is implied and expressed in the very existence of this House of Commons. It works in every fibre of our political being, and if the authority to speak for the nation is not to reside within these walls, if that authority is to

be usurped by the non-elective House it follows that our representative institutions must take a secondary place, and we shall have to abate our claim to be the foremost among free and representative communities.

Now, I have to ask the House to consider how this great principle is applied in practice. What meaning does the supremacy of the House of Commons convey to the minds of the House of Lords? In the first place, it is matter of common knowledge that its working varies according to circumstances. When their own party are in power—that is the party to which the vast majority of the members of the House of Lords belong—they recognise without reservation, they even make what I would almost call indecent haste, to recognise this supremacy. There is never a suggestion that the checks and balances of the Constitution are to be brought into play; there is never a hint that this House is anything but a clear and faithful mirror of the settled opinions and desires of the country, or that the arm of the executive falls short of being the instrument of the national will. No, Sir; the other House, in these circumstances, may be said to adopt and act upon the view of the inherent authority of this House, which was expressed by Edmund Burke in these words—

'The virtue, spirit, and essence of the House of Commons consists in its being the express image of the nation.' . . .

Now I come to another question which we have to ask ourselves, and that is: What is the nature of the authority under which the other House, during its intermittent period of activity, claims to override and suspend the decisions of this House and to afford it a merely nominal and deferred predominance? What are the grounds on which the Lords intervene? There is no occasion to go back very far. Before the Reform Act there was really no question of this kind before the country, for this reason: Both Houses were in the habit of working together in the interests of the existing state of society, which was very far from being a democratic state, and any tendency to independence on the part of the House of

Commons was held in check by the fact that there were some 300 votes in this House under control of the members of the other House. There was, therefore, in these circumstances, no particular occasion for a veto. Nor do I propose to go over subsequent history—a dismal history in this respect, in which beneficent measures were flouted or rejected or mutilated and violent hands laid upon them by the other House. Their actions are all of a piece, and I think we may be quite content to take the most recent instances as a pattern and example of what has been happening ever since the Reform Bill was passed. We take them because we have them fresh in our minds. They happened under our eyes in the present Parliament, which has not had a long life yet. These events, marking as they do, in my opinion, the climax of this long series of rebuffs put upon this House, and through this House upon the electors, embody in themselves in a sufficiently striking manner the claims that are really put forward to stultify the action of the Commons. When you find a general election like the last treated as mere irrelevance, and a House of Commons which returned with an unexampled majority regarded elsewhere as a body devoid of real vitality and vital authority, I say we then have to look upon its claims with a stronger feeling, because they are put forward with a degree of violent aggressiveness which compels us to challenge them. If we are concerned at all with the authority of the House of Commons—and I trust that everyone within these walls is concerned—it is impossible for us to let this pass. I therefore take the actual cases within our own immediate experience as the touchstone of the claims of the other House.

The first thing I would point out is that the merits and demerits of the Bills that we deal with are not in question at all. The Education Bill and the Plural Voting Bill may be thoroughly bad Bills in the estimation of hon. Members opposite and of the right hon. Gentleman at the winding of whose horn the portcullis over the way comes rattling down. If the country shares the view of the right

hon. Gentleman, it is not there [the Front Opposition Bench] he would be, but here. But let hon. Gentlemen observe that the other House, when it proceeded, within twelve months of the election, summarily to dispose of these measures of ours, did so, according to its own account, not on their merits, but because it claimed to know the mind of the country. That was the plea that was urged. 'Your Education Bill,' they said, 'does not square with the professions of the people or the desires of the people, and as for your Electoral Reform Bill, it ought to be part of a larger scheme of reform such as the country desires.' Of course, they dwelt on the vicious qualities of our poor Bills. So they did in the case of the Trades Disputes Bill, which was an even blacker and more iniquitous Bill than they were. But they passed this Bill, and they rejected the less infamous Bill; and they were strictly logical in so doing. By that I mean that the reason they gave was an intelligible reason. They professed to be satisfied that a powerful section of opinion demanded the one Bill, and they professed to be unsatisfied that the others were so demanded. They acted on their own judgment. Their whole case rests upon that. And I may add as a subsidiary reason that in the case of the infamous and iniquitous Bill it was considered desirable to exercise some circumspection. We all remember the words of Lord Lansdowne that they were passing through a period when it was necessary for the House of Lords to move with great caution. Conflicts and controversies might be inevitable. Let their Lordships, as far as they were able, be sure that if they were to join issue they did so on ground which was as favourable as possible to themselves—not to the country—in the interests of good and sound legislation. In this case he believed the ground would be unfavourable to the House. So they passed that most iniquitous and dangerous and disastrous Bill. They made friends with the mammon of unrighteousness with a view to maintaining themselves in their own habitation. Therefore, in addition to this intermittent action we have to take note of this further

singular fact that the powers of that House are avowedly exercised without reference to the merits of what is sent up to it, and on the ground that we, who are the representatives of the people, as the result of all our elaborate electoral machinery, are incapable of speaking and acting on their behalf. Such a claim will not stand a moment's investigation. The Constitution knows nothing of this doctrine of the special mandate, nothing whatever. It is an invention apparently of the Lords, designed to afford them some kind of shelter behind which they may get rid of the Bills they dislike.

Now, I am anxious to make this matter clear, because it is important to my proposition—namely, that the relations of the Houses call for definition; and if the action of the House of Lords is based on assumptions which are fatal to a true representative system, then the question of how far they are entitled to push such action surely requires serious consideration. If this House was elected on a mandate for this or a mandate for that, or a mandate for the other, I could understand, even if I did not approve of, the process of sifting and trying our decisions in order to see whether they corresponded with what passed at the elections. In its absence such a claim becomes grotesque. Yet how seriously is it urged. We are invited to go to the country *ad hoc* to test whether the other House or this House is right whenever we come to a deadlock. We have not been elected on any such system as that. We were elected to carry out certain broad principles, and yet forsooth, we are to go back, and be re-elected on Bills and on sections of Bills and subsections of Bills if we are to convince the other House.

I shall have a word to say directly on this demand for a dissolution, but I want first to say how glad I am to be able to claim the right hon. Gentleman opposite [Mr. Balfour] as a sworn foe of the doctrine of the mandate. He has described it as fundamentally, essentially a vicious theory. 'You could not work Parliamentary institutions,' he says, 'on that principle at all.' [Opposition cheers.] Yes, but it is on that very principle that the House of

Lords are working. Why has the right hon. Gentleman not warned the House of Lords that they are pursuing a course under which, as he says, parliamentary institutions cannot be worked at all, and that they are seeking to inveigle us into an unconstitutional and vicious system? It is strange that when they challenge us because we have not got a mandate for this, or that we have misread a mandate for that, or that we must go to the country for a mandate for the other thing, the right hon. Gentleman sits quietly and allows them to flounder into the morass.

The next question I have to ask is by what title does the other House claim to refer the House of Commons to the country? Perhaps the right hon. Gentleman will tell us that. I have never myself seen any explanation, or understood how a doctrine so fantastic could gain even a momentary currency. The Liberal Party has never for a moment accepted the view that the non-elected, unchanged, indissolvable, irresponsible House is entitled to suspend a threat of dissolution over our heads; nor have they regarded the pretension so advanced as affording any sort of ground for the action taken under cover of it. Let the House consider what weight can attach to a theory which has never been put into operation, which has never been recognised by one party in the State, and which has never been held over the heads of the other party in the State. And then I must say that this assumption of the right to force a dissolution is a usurpation of the royal prerogative. It is a device for turning the House of Commons into a subordinate House, because the Lords are well aware that, in declining to accept their bidding, we have no remedy against any changes, delays, or rejections that they may inflict upon our measures. Well, holding us in this vice, and taunting us with the cry: 'You have the country; why do you not go to it?' they have a free hand as against this House. Well, what is the use of our going to the country? If the Lords will not believe the elections of 1906, neither will they be persuaded though the wishes of the people are expressed



in ten elections in a year. And then, I will ask, is this House satisfied, is any one satisfied with it? Is it fair—I will not say fair to the Liberal Party, because I think there is a great tendency, which, I think, is not quite dignified in the House of Commons, to treat politics as a game—but is this playing the game fairly? Putting the Liberal Party aside, is it fair to the House, is it fair to the electors? Is it right that the Constitution should be strained in this way in order to suit the convenience or exigencies of a particular party? If hon. Gentlemen were in our place, and if there was as overwhelming a Liberal majority in the other House as there is an overwhelming Unionist majority, would they sit down quietly under the mutilation and rejection of their measures? No; I give them credit for something more spirited. And is there to be found a single observer or student, be he ever so convinced of the necessity of a bi-cameral system, who will maintain that this state of things, persisting as it has done all these years, is satisfactory? Our proposal is to define the relations between the two Houses in such a way as to provide that within the limits of a single Parliament a measure supported by a majority in this House shall prevail.

THE HOUSE OF LORDS AND FINANCIAL  
MEASURES*LORD (afterwards Marquis) CURZON OF  
KEDLESTON**House of Lords, 30 November 1909**(4 H.L. Deb., 5 s., 1258 ff.)*

[This speech was made on the motion for the Second Reading of the Finance Bill (Lloyd George Budget) of 1909 in the House of Lords.]

What is the real character of the issue before this House and the country? The Government are fighting for the principle that the House of Commons may send up any measure, however dangerous, socialistic, and subversive in our view it may be; and, provided it can be cramped within the four quarters of the Finance Bill of the year, we are to have no alternative but to pass it. That is a novel, a revolutionary, and an intolerable claim. It is one which your Lordships have never acknowledged, and which you have no right to acknowledge now. You have no right to acknowledge it in the interests of this House, because it is clear that this House would be reduced to legislative impotence if it were possible to take particular Bills out of the ordinary course of legislative procedure and tie them up under the cover and label of a Finance Bill, and in that way circumvent your Lordships and pass them through your Lordships' House. You have no right to give away without a struggle the rights and privileges which you have enjoyed and which have been vindicated by many of your greatest statesmen and orators for 250 years.

But I think there is a higher sanction still. You have no right to do this in the interests of the people at large. Remember that your surrender now would mean that nothing would stand in future between the people and

the power of the House of Commons, which, in other words, means the Government of the day, to pass into law whatever they might desire. You would really be committing the country to a Single Chamber Constitution. That means a Constitution in which one Chamber can override the other without the necessity of an appeal to the people. And in that case it would only be a natural and almost logical consequence for some Minister or some Government to come forward at a future date and propose that this Constitution of ours, which we have always thought the glory of this country and the wonder of the world, should be assimilated to the Single Chamber model of Bulgaria or Greece.

May I now endeavour to answer the implication made in the speech of the most rev. Prelate that your Lordships are taking a novel and unconstitutional course? As far as I can understand the charge of unconstitutional procedure, it takes two forms. The first contention is that we are acting unconstitutionally in compelling an appeal to the country. I confess I do not fully appreciate the nature of this charge. It appears to me to be inherent in the rights of any Second Chamber—and I find them described as such in all the constitutional handbooks—that in the last resort a Second Chamber can compel a reference to the polls. The time may arise and does sometimes arise when a disagreement between the two bodies can only be settled by such a solution. I am quite willing to say that the cases in which that right should be exercised must be closely circumscribed in practice. I can only imagine two cases in which it would be right for a Second Chamber to take such a course. One would be the case in which the Government of the day had introduced some measure in flagrant conflict with the expressed will of the nation. The other would be the case of legislation embodying principles or provisions which had never been submitted to or approved by the electorate of the country. In either of such cases it would appear to me to be part of the inherent duty of a Second Chamber to say that the measure should not become law

until it had been referred to the judgment of the people. Such a power is safeguarded by the obvious check that if it is rashly or frivolously used it recoils on the heads of those who use it. Therefore I am not greatly moved when I hear these charges of unconstitutional action in this respect, because it seems to me that the country is protected in the first place by the evidence of history, by the records of your Lordships' House, which show that, although you have enjoyed these powers for hundreds of years, you have exercised them with very considerable moderation and self-restraint; secondly, by the force of public opinion to which your Lordships have never shown any unwillingness to bow; and, in the third place, by the instinct of self-preservation which is likely to prevent your Lordships from any foolish or partisan proceeding.

The second charge of unconstitutional procedure to which the noble and learned Lord, Lord James of Hereford, and the most rev. Archbishop alluded is a rather different one. It is that we are doing a novel and unconstitutional thing in rejecting the Finance Bill of the year. I do not propose to argue the question whether there is a distinction between the law and the Constitution or whether there is a distinction between Money Bills and Supply Bills. The constitutional authorities have argued both these questions in this debate. I am prepared, for the purpose of argument, to suppose that such a distinction can be drawn in both cases. But that does not settle the matter. What is the history and what are the facts of the case? The history of this controversy, into which I have not the slightest desire to plunge, may be roughly summarised, first as the period extending from the time of the Stuarts to 1860, and, secondly, as the period from 1861 to the present day. In the interval between the two, in 1860 and 1861, there stand out like landmarks on a flat horizon the incidents of those two years. The history of the matter up to 1860 it is unnecessary to recapitulate. As everybody knows, this controversy has gone on with varying fortunes on either side and many vicissitudes for centuries.

The right of the House of Lords to reject Money Bills and even to amend Money Bills has been constantly claimed, frequently exercised, and even admitted by the House of Commons. These rights were conclusively vindicated in the debates of 1860. There is still in your Lordships' House a Peer, and for all I know there may be more than one, who heard the famous speech which was delivered by Lord Lyndhurst, on May 21, 1860, on his eighty-eighth birthday, stating, recapitulating, and advocating with all the power of his undimmed intellect and with all the force of unexhausted youth the rights and privileges of your Lordships' House. That Peer is my own father, and he and his son will go together into the Lobby to-night in support of the propositions which Lord Lyndhurst laid down in a manner which could never be challenged on that occasion. In 1860 your Lordships did precisely what we are told is unconstitutional now. They threw out the Paper Duty Bill, in spite of the fact that it was contended by Mr. Gladstone and Lord Granville that it was an essential part of the Supply of the year. That was the whole case of the Government. But your Lordships, acting on the advice of Lord Lyndhurst, Lord Chelmsford, and Lord Derby, threw the Bill out.

What happened? The House of Commons did then what I believe they are going to do now. They passed a number of Resolutions affirming the prerogative of the House of Commons. Mr. Disraeli, satisfied with the admissions of Lord Palmerston and Mr. Gladstone as to the rights and privileges of your Lordships' House, actually, I believe, voted for the Resolutions. But in the next year Mr. Gladstone inaugurated a new financial era. In order to circumvent your Lordships' House—the whole story is told in the book of the noble Viscount opposite—he embodied for the first time in a single Bill all the measures which it had previously been the fashion to send up one by one. That was a piece of strategy on the part of Mr. Gladstone; it was deliberately avowed as such. He left on record a statement in which he said

the House of Lords for its misconduct was deservedly extinguished in effect as to all matters of finance. It is true that in the following year, when the conflict might have been resumed by your Lordships' House, the House of Lords did not do so, but took another course on the advice of Lord Derby, mainly because the Paper Duty Bill was a Bill not for the imposition but the relief of taxation, and because it was one with the principle of which the Conservative Party agreed. The measure was accordingly accepted as part of the Finance Bill of the year.

But my point is that the House of Lords did not on that occasion surrender their rights. They remained intact, they could not be extinguished by the openly avowed and vindictive act of a Minister in the other House. They could not be extinguished by any act of the House of Commons. If now your Lordships choose to revive them, they can only be destroyed by an overwhelming pronouncement on the part of the country. The idea that your Lordships are doing anything now for the first time which is entirely novel and unconstitutional is therefore an idea without foundation. You are doing now what you did in 1860. When Lord James says, 'How comes it that this action is now taken for the first time?' the answer is this—It was taken repeatedly up to the year 1860, but it was taken in a different form, because the Bills always came before you separately up to that date. The reason why you have never taken this step since 1860 is that no Chancellor of the Exchequer has been found in that interval to put before you a Bill like the present Bill, which so directly challenges the constitutional prerogative of your Lordships' House and compels you to take a course of action which you have never signified your intention to relinquish but which occasion has not arisen to take during the last fifty years. We deny, therefore, that we are now setting up any new or extravagant claim. We recognise the right of the House of Commons to control, under normal conditions, the finances of the country. But we say that we have the power and the duty, always enjoyed

and frequently acted upon, to see that that right is not abused in order to carry through, under the guise of financial measures, policies or principles which have not been approved by the people. And we signify our willingness to bow to the final expression of the popular will when once it has been expressed in clear and constitutional form.

THE HOUSE OF LORDS AND FINANCIAL  
MEASURES

HERBERT HENRY ASQUITH

(afterwards Earl of Oxford and Asquith)

House of Commons, 2 December 1909

(13 H.C. Deb., 5 s., 546 ff.)

[ASQUITH, as Prime Minister, lost no time in dealing with the situation raised by the rejection of the Finance Bill (Lloyd George Budget) of 1909. He moved: 'That the action of the House of Lords in refusing to pass into law the financial provision made by this House for the Service of the year is a breach of the Constitution and a usurpation of the rights of the Commons.']

We are met here this afternoon under circumstances which are unexampled in the history of the British Parliament. Nearly ten months ago the Sovereign, in a paragraph in the gracious Speech from the Throne, addressed to the House of Commons, and to the House of Commons alone, invited us to make provision for the heavy additional expenditure which is due to the necessities of social reform and of national defence. In a session, which, if not for the actual length of its duration, certainly for the strenuousness of its labours, is, I believe, almost without a rival, we have addressed ourselves to that task. Never in the history of this House have more time and labour—rarely, if ever, have so much time and labour—been given to the construction and to the consideration of any proposals as were given to the Budget of this year. Never, I would add, has the process of deliberation and amendment been more free and untrammelled. Never has more consideration been given to everything that was put forward in the way of suggestion or of criticism. When a short time ago the Finance Bill received its Third Reading, and as it left this House, it



represented, I believe, in a greater degree than can be said of any measure of our time, the matured, the well-sifted, the deliberate work of an overwhelming majority of the representatives of the people, upon a matter which, by the custom of generations, and by the course of a practically unbroken authority, is the province of this House and of this House alone. In the course of a week, or little more than a week, the whole of this fabric has been thrown to the ground. For the first time in English history, the grant of the whole of the Ways and Means for the Supply and Service of the year—a grant made at the request of the Crown to the Crown by the Commons—has been intercepted and nullified by a body which admittedly has not the power to increase or to diminish one single tax, or to propose any substitute or alternative for any one of the taxes. The House of Commons would, in the judgment of His Majesty's Government, be unworthy of its past and of the traditions of which it is the custodian and the trustee if it allowed another day to pass without making it clear that it does not mean to brook the greatest indignity, and I will add the most arrogant usurpation, to which, for more than two centuries, it has been asked to submit. . . .

No one will deny that the House of Lords has a technical right to reject a Finance Bill or any other Bill. I certainly am not in the least concerned to deny that there have been cases in the old days in which this House has acquiesced, though rarely without protest, not only in the rejection, but in the amendment of Bills which were concerned with the taxation of the country. For the most part these cases were trivial, and even trumpery in their character; but ever since 1628—I do not need to go further back than that to establish constitutional usage—when by the advice of the greatest lawyers of that day the mention of the Lords was deliberately omitted from the granting words in the preamble of Supply Bills, this House has asserted, with ever-growing emphasis, its own exclusive right to determine the taxation and the expenditure of the country. The demand, as I pointed out already, in

the speech from the Throne for Supply, is made every year by the Crown to the Commons, and to the Commons alone, and the answer to that demand comes from the Commons, and from the Commons alone. I will not weary the House by citing authorities; but I will quote the words of one who is entitled to rank among the greatest of all of them—a man who earned for himself by his services to his House and to his country in his day the title of the great Commoner—the first William Pitt. He stated in words which have become classic:

'Taxes are a voluntary grant and gift of the Commons alone, and the concurrence of the Crown and the Peers to a tax is only necessary to clothe it with the form of law.'

That exactly stated the case as it was then, and as, 130 years afterwards, it remains to-day. Within the practice of our own time there is one case, and one only, in which the House of Lords has ever attempted to interfere with the financial functions of this House. That is the familiar case of the Paper Duty in 1860, where, the House of Commons having sanctioned the repeal of the tax, the House of Lords refused to give its assent to the repeal. The Commons took swift and summary vengeance. In the following year they passed the same tax, in company with a number of others, as part of the general financial arrangements of the year, and the House of Lords acquiesced, and from that day to this has never attempted again to question the sole and exclusive competence of this House in matters of Supply. That was the case of a single tax. Such a step as has now been taken that the whole finance of the year, some ten or eleven taxes, are rejected *en bloc*, is without the faintest shadow of a precedent in the whole course of our parliamentary history. A year ago, indeed, I may say, until about six weeks ago, whatever expressions may have been used from time to time by one statesman or another as to the technical and legal rights of the House of Lords, what I have been saying during the last ten minutes would have been looked upon as a truism. It would have been

universally admitted as a correct and entirely unexaggerated statement of our constitutional practice. I need not go further back in support of that proposition than two years ago, in the month of June, 1907. In that month my predecessor, Sir Henry Campbell-Bannerman, proposed, and this House carried, a Resolution in favour of limiting the veto of the House of Lords on legislation, a Resolution which remains recorded in our journals, which it is quite unnecessary at this moment to reaffirm. But in the course of that debate not even the most tenacious stickler for the extremest view of the privileges of the House of Lords claimed, and not the most uncompromising critic of the House of Lords thought it necessary to deny, the alleged right which is now put forward. I am quite content to take upon that point the statement of the right hon. Gentleman, the Leader of the Opposition. I will read his words, because no language more germane to the topic which we are considering to-day could possibly be cited from any speech which has been delivered in our time. The right hon. Gentleman said this on 24th June, 1907:—

‘We all know that the power of the House of Lords’ (he speaks of some limitations which are not material)—‘is still further limited by the fact that it cannot touch those Money Bills, which, if it could deal with, no doubt it could bring the whole executive machinery of the country to a standstill.’

I pause here to make two observations. I assume that if you cannot touch a thing you cannot kill it. That is my first observation, and the second is that the right hon. Gentleman showed, as might be expected of him with his large administrative experience, a prophetic insight into what would be the result of the House of Lords touching a Money Bill, if it were so ill-advised as to do so, that it would bring the whole executive machinery of the country to a standstill. How does the right hon. Gentleman go on?

‘The conclusion which I want to press upon the House, and which is all-important in this matter, is that under our existing system you have two Chambers which are not of

equal power, which are not of equal authority, which cannot come into serious conflict in the whole field of administration, in the whole field of the initiation of legislation, or in the whole field of that legislation which deals with finance.'

As the result of our constitutional usage the House of Lords was in a position of admitted, if you like, inferiority, or, if you like, limitation or incapacity, with regard to certain matters of which finance is one, which made it impossible to come into serious collision with the House of Commons. In other words, in regard to such matters as that, the will of the House of Commons must, according to constitutional practice, be supreme. I do not want any higher testimony than that. Of course, we shall be interested to learn how, if at all, and for what reasons, the right hon. Gentleman has modified the view which only two years ago he authoritatively expressed. I am not going to discuss in reference to this unprecedented act the merits of the Finance Bill with the House of Lords, but I think it is only right and fair before I bring my case to a conclusion that I should examine such justifications as have been put forward for the action which has been taken. In the first place, I have seen it suggested, with, I think, increasing faintness of conviction, that this Bill was not a Finance Bill at all, and that, therefore, the constitutional rule does not apply. That, of course, is one of the most absurd contentions which has ever been advanced by a bankrupt controversialist. Here is a Bill of nearly 100 clauses, which imposed 10 or 11 different sets of taxes. I will undertake to say there was not a single clause which was not relevant to its primary and governing purpose, namely, the raising of revenue. The only argument ever suggested in a contrary sense is as to the somewhat elaborate provisions which were made for valuation; and in regard to that I may point out again, what has often been pointed out before, that if you are imposing a new set of taxes upon a new taxable subject you will be guilty of, at any rate, unbusinesslike conduct if you did not provide adequate machinery for assessment and collection, and my right hon. Friend in this respect

was only following the precedent set up by Sir Robert Peel in 1842 in the Income Tax Act, of Mr. Gladstone in 1853 in the Succession Duty Act, and by Sir William Harcourt in the Finance Act of 1894.

But there is another reason which is put forward by way of justification which I think demands rather fuller scrutiny. The House of Lords, or their apologists, tell us that they have not rejected this Bill. All they have done is to refer it to the people. I want to examine this doctrine of the power or the duty of the House of Lords to refer certain sorts of Bills to the people a little more closely than has been done, at any rate in this House. What does it amount to? Hitherto, when any Government has received the assent of the House of Commons to its financial resolutions, it has been assumed on all hands that in substance they would pass into law. Taxes have been paid, received, collected, even demanded, on the strength of these Resolutions. What would be the case if this precedent of a reference of the Finance Bill to the people is once adopted and acted upon? No Government will be safe—when I say no Government, of course I mean no Liberal Government—in following what has hitherto been the universal practice. Of course, it cannot tell whether the House of Lords may not, late on in the summer, or even as this year late in the autumn, be minded at the last moment to refer the whole of these taxes to the people. When you come to analyse it, it means that the House of Lords will have the power to compel the Executive of the day to adopt one of three courses—firstly to submit a new Budget to the House of Lords to meet with their approval; secondly, to send up again, and perhaps time after time, their old Budget, with no provision in the meantime, or no adequate provision for the financial necessities of the State; or, finally, to advise the Crown to dissolve Parliament.

These are entirely novel claims, and they ought not to be allowed to pass without clear, emphatic, and immediate protest. On what are they founded? They are founded, as I say, on what I believe to be an entirely novel assumption

that the House of Lords has the right, if it does not like a Bill, to compel a reference to the electorate. I assert, on the contrary, two very simple propositions. The first is that the presumption always is that the House of Commons, freely chosen by the people, represents the will of the people; and the second is that there is no presumption of any sort or kind as regards the House of Lords. I would say, parenthetically, I am quite willing and anxious, so far as the House of Commons is concerned, that that presumption should be strengthened and reinforced by shortening the duration of Parliament, and therefore, by a more frequent contact between the elected body and the electorate; but this new-fangled Caesarism which converts the House of Lords into a kind of plebiscitary organ is one of the quaintest inventions of our time. Let us see what it is. I will try to put the theory as plausibly as I can against myself. The theory is that the people require to be protected against their own elected representatives, especially—may I not say exclusively?—when the majority of those representatives happen to belong to the Liberal Party. By whom is the protection to be afforded? In what quarter is it to be found? Here the theory goes on that Providence, as in so many other ways, has been exceptionally kind. It has supplied us with exactly the kind of thing we want for the purpose by an unforeseen and unforeseeable evolution in our ancient House of Lords.

It is true at first sight that, even to an uninstructed observer of an Assembly, which is composed in the proportion, I suppose, of somewhere between 20 and 10 to 1 of members of a single political party, might not seem to be pre-eminently qualified to exercise a judicial or quasi-judicial function; but here again Providence steps in, and it would seem that either at birth, or, as the case may be, upon creation of a peer, who receives a patent of peerage, there descends upon the favoured individual what I may call a kind of instinct of divination which enables him at all times thereafter to discern to a nicety, provided always that a Liberal Government is in power, the occasions and the matters in regard to which the people's

representatives are betraying the people's trust. We are sometimes told by sceptical people that the age of miracles is past. If the theory which I have just been endeavouring—I hope without exaggeration—to enunciate is anything like true, then the whole British Constitution depends on the offchance of a succession of miraculous events.

The truth is that all this talk about the duty or the right of the House of Lords to refer measures to the people is, in the light of our practical and actual experience, the hollowest outcry of political cant. We never hear of it, as I pointed out, when a Tory Government is in power. It is never suggested when measures are thrust by a Tory majority by the aid of the guillotine and the Closure, and all the rest of it, through this House—measures which, unlike every one of the governing provisions of the Budget of the present year, have never been approved or even submitted to the electorate. It is simply a thin rhetorical veneer, by which it is sought to gloss over the partisan, and in this case the unconstitutional, action of a purely partisan Chamber. The sum and substance of the matter is that the House of Lords rejected the Finance Bill last Tuesday, not because they love the people, but because they hate the Budget.

This motion, which I am now about to propose, is confined in terms to the new and unprecedented claim made by the House of Lords to interfere with finance. But I am sure, in fact I know, I am speaking the mind of my colleagues, and, I believe, of the great bulk of those who are sitting on this side of the House, when I say that it represents a stage—a momentous and, perhaps, a decisive stage—in a protracted controversy which is drawing to a close. The real question which emerges from the political struggles in this country for the last thirty years is not whether you will have a single or a double Chamber system of government, but whether, when the Tory Party is in power, the House of Commons shall be omnipotent, and whether, when the Liberal Party is in power, the House of Lords shall be omnipotent.

We are living under a system of false balances and

loaded dice. When the democracy votes Tory we are submitted to the uncontrolled domination of a Single Chamber. When the democracy votes Liberal, a dormant Second Chamber wakes up from its slumbers and is able to frustrate and nullify our efforts, as it did with regard to education, as it did with regard to licensing, as it has done again this year with regard to measures for Scotland, and with regard to finance. I cannot exhaust the list; it would be too long. They proceed to frustrate and nullify the clearest and most plainly expressed intention of the elective House.

The House of Lords have deliberately chosen their ground. They have elected to set at naught in regard to finance the unwritten and time-honoured conventions of our Constitution. In so doing, whether they foresaw it or not, they have opened out a wider and a more far-reaching issue. We have not provoked the challenge, but we welcome it. We believe that the first principles of representative government, as embodied in our slow and ordered but ever-broadening constitutional development, are at stake, and we ask the House of Commons by this Resolution to-day, as at the earliest possible moment we shall ask the constituencies of the country, to declare that the organ, the voice of the free people of this country, is to be found in the elective representatives of the nation.



THE HOUSE OF LORDS AND FINANCIAL  
MEASURES

ARTHUR JAMES BALFOUR

(afterwards Earl of Balfour)

*House of Commons, 2 December 1909*

(13 *H.C. Deb.*, 5 s., 558 ff.)

[BALFOUR replied to Asquith's speech, No. 33.]

The more important portion of the speech of the right hon. Gentleman who has just sat down [Mr. Asquith, Prime Minister] was devoted, and most properly devoted, to the defence of the motion he has put on the paper. . . . The right hon. Gentleman moved easily and quickly through large spaces of English history. He went back to 1628, and he came down to the Paper Duties. Did he give a single argument indicating that the course which the House of Lords has recently pursued is a course which, in the language of the Resolution, is a breach of the Constitution and a usurpation of the rights of the Commons? The right hon. Gentleman really never touched that point. He based his observations, as I understood him, upon a distinction between that which is technically within the law and that which is substantially within the Constitution, and he said that he did not deny that rejection by the House of Lords was technically within the law. He did deny that it in no substantial sense was within the limits of the Constitution. I think the right hon. Gentleman is absolutely wrong, not in drawing a distinction between that part of our Constitution which is written on the Statute Book and that part of our Constitution which is not written on the Statute Book—of course there is that distinction; but within the Constitution, which is not written on the Statute Book, there are some things which are technically possible which substantially

nobody would recommend. There are other things which are done every day, and there is a third class, belonging neither to the first nor to the second class of things—things which certainly ought not to be part of our everyday practice, but which are clearly within not merely the written law of the Constitution, but within its spirit, interpreted in any broad and statesmanlike way.

I do not know why the right hon. Gentleman should have so deliberately ignored some of the points which he must know lie on the very face of this constitutional discussion, and which are of vital importance to a proper understanding of it. Take so important a point as this, that the House of Commons, with whom rested originally the most precise statement of the claims of this House as we, the House of Commons, chose to interpret them, as against the Lords, admitted in terms that the House of Lords had a right to reject. They said: 'You cannot originate; you cannot modify; we admit you can reject.' If the very original Resolution on which all our claims are based, the very history in which it is embodied, bears on the face of it that admission, gratuitously made by the House of Commons, why are we to go back on that, and why are we now to alter, not the written law, but the substance of the Constitution, in a matter never contemplated by those who originally started, and did more than any others to carry through, the distinction of function which nobody denies, and I am the last to deny—the distinction of function which does separate this House from the other House in the matter of financial arrangements?

The right hon. Gentleman tells us there is an unbroken tradition under which the House of Lords has never rejected the financial proposals of the year—has never interfered, never abolished the financial arrangements of this House for the year. How long has that unbroken tradition continued? It evidently could not go back before the period when all our provisions for taxation were embodied in one Bill, and that is within the memory of men living. I am not sure that there are not men sitting in this House at this moment who were members of

this House when it was first made. What is the use of talking? Go back through the English Constitution to all the precedents of the centuries and you will not find a precedent. The English Constitution did not begin in 1860, but before that. It is quite true that the Budget embodying the taxes of the year was never rejected, because there never was a Budget Bill embodying them; it is an entirely modern invention, modern in the sense not merely measured by the antiquity of the British Constitution, but modern as measured by the ordinary standard of human life and human experience. Therefore, to claim tradition for this is to ignore the very fundamental fact under which we have endeavoured to deal in the past with our financial necessities.

The second point of the right hon. Gentleman was this. He said—if you admit that there are, in addition to certain things which are forbidden by the statute law, other things which are technically possible and which are forbidden by unvarying custom, is not this one of them? If hon. Gentlemen consider this argument, they will see how utterly empty and vain it is. Manifestly the rejection by the House of Lords, or—the right hon. Gentleman does not like the word—the statement of the House of Lords that they do not think the Bill ought to pass until it is submitted to the people, undoubtedly a statement of that sort, an arrangement of that sort, is one which must be of rare occurrence. Some hon. gentlemen may think differently; they may think it should be of annual occurrence. In my opinion it is not a part of our ordinary procedure. It is, from the very nature of things, exceptional, and because it is exceptional naturally it is rare; because the occasions of its exercise must be exceptional, therefore they must be rare. You have no right to claim the rarity, which is an essential part, as showing that the power itself ought to fall into desuetude. I hope those occasions will be very rare; I also hope the power will never be abandoned; I do not think it will ever be taken away.

There was one part of the right hon. Gentleman's

speech with the general spirit of which I sympathize. He indicated—I did not take down the exact language; he used, as he always does, words admirably chosen to express his meaning—that you must judge these constitutional questions, when you are not dealing with a formal written Constitution, in accordance with broad issues, broad views of public policy, and broad views as to the development of great and free institutions. I agree with that. He abandoned, for the moment, and rightly abandoned, the attitude of the mere historical investigator, and he tried to consider the question, as it ought to be considered, in its broader aspects. I think he should, before he went to that part of his subject, have reminded us how many of his own colleagues have told us—I only mention this again to put it on record—and have deliberately laid down, that the powers which the House of Lords have recently exercised are powers, not of which they were merely technically possessed, but of which they had a substantial user. Mr. Gladstone laid it down, Lord Spencer laid it down, Lord Ripon laid it down, the present Lord Chancellor laid it down, and these were all gentlemen who had served with the right hon. Gentleman in Cabinets, who had been his colleagues, who had been great authorities in the party of which he is now the leader, and I say one and all have laid down in terms a proposition which makes absolute nonsense of the Resolution which he is now asking this House to stultify itself by putting for a few hours upon our journals.

I revert to the broader question which the right hon. Gentleman has raised. He spent much invective, some of which I thought a little cheap, in denouncing the principle and practice of an hereditary Chamber. I am not going to trouble myself on the present occasion to deal with the question of whether in this country at this time you can very greatly improve, in your Second Chamber, upon the hereditary principle. I am by no means certain that if some of the theoretical politicians below the gangway, to whose logical souls the very word 'hereditary' is objectionable—I am not at all sure, if they were concerned in

making a Second Chamber on non-political principles, whether they would not make one which this House would find a much more formidable difficulty than the hereditary Chamber which they now find it so easy to deride. But, at all events, for the moment, and until you have a better, the House of Lords is the Second Chamber. It performs, ill or well, in this country the functions which every Second Chamber in all other countries, in all other large and complex civilizations, performs. I gather there are some hon. Gentlemen on that side of the House, and I am sure there are some on this side of the House, who do not like a Second Chamber, who would be happier with a Single Chamber system, or think they would, and perhaps look forward some day to be in a position to put this country in the solitary, and I think it would turn out to be the not enviable, position of being the one great civilized community trying that system.

May I ask the Government whether they at all differ from Mr. Bryce's view on this subject? He is our Ambassador to the United States of America, and he was lately a member of the present Administration. He lays it down that the need of two Chambers is an axiom of political science based upon the belief of an innate tendency of one Assembly to become hasty, tyrannical and corrupt, a tendency which can only be checked by the co-existence of another House of equal authority. I do not want another House of equal authority, but I agree with Mr. Bryce, and I respectfully but humbly join myself with those who regard it as an axiom of political science that a Second Chamber is a necessity. . . .

If it be true that a Second Chamber is required because a Single Chamber has a tendency to become 'hasty, tyrannical or corrupt' I would ask how far you think it wise in the interest of the country to clip and curtail those powers which that Second Chamber now possesses. I have a perfectly clear conviction in my own mind that the powers which the House of Lords possess at this moment are not excessive, and that the efforts you have so recently been making to curtail them not only partake of pettiness

in their character, but are extremely inconvenient and detrimental to the public interest.

You, Sir, are obliged from that Chair to administer the traditions as they have been gradually stretched and stretched by your predecessors in regard to what does or does not constitute a breach of the privileges of this House in connection with ordinary legislation; and I think you will find that the House of Commons is now driving the use of those privileges to a point which will react upon its own legislation, and can have no good effect from the public interest at all, which looks too often like an exhibition of mere petty spite, and which certainly seriously cripples, or, if it is permitted to go on, will seriously cripple, the utility of the Second Chamber in regard to matters which are often of no party controversy at all. Like so many of our other Parliamentary institutions created for quite another purpose, this claim of privilege is now often used merely to get a Minister in charge of House of Lords' Amendments out of a difficulty, to find a reason for rejecting them—a reason which it would be very difficult indeed to find, if he could not take refuge in this time-honoured resource—and nothing could be more comic to anyone who looks into it than all these expedients of printing in italics and red letters as used to be the case; and then, if the Government like an Amendment, they move to waive your privileges; if they do not like an Amendment they get out of their difficulty by the very simple expedient of leaving it to the Chair.

But these things are relatively small, though I believe they are doing a great deal of harm to your legislation. There are other things which are bigger, and, observe, I am now dealing with the argument of the right hon. Gentleman that we must look at the development of the Constitution and of constitutional work as a whole. Observe there are changes going on in our flexible Constitution, both in this House and out of it: Is this House what it was, let us say, in 1678, or at any other date you choose to name? We see day by day that the exigencies

of debate compel successive Governments to draw tighter and tighter the limitations on our discussions, until it is not so much a Single Chamber which you are trying to institute—a Single Chamber discussing and passing Bills and representing its constituents—but it is a Single Chamber managed by a single Government, and not discussing at all. . . .

The course which the House of Lords have pursued is one strictly in accordance with the whole theory of the Second Chamber as it is and as it ought to be understood in these modern days, and my personal belief is that the country takes my view in this matter. I do not believe they think that the House of Lords have gone beyond their duty. I do not believe they think that the House of Lords are putting their hereditary privileges between them and the satisfaction of their desires. I do not believe they are so stupid as to think that. The people who think that are those who never get beyond the ground of legal constitutional history, who never look at facts as they actually are in the concrete world in which we live, who are incapable of seeing that a reference of this kind of great and new financial principles to the country, so far from being an interference with the true growth and movement of democracy, is a security, and, in my opinion, the only security, that the growth of democracy will not be accompanied by that very kind of abuse by which democracy itself ultimately suffers and perishes.

# THE HOUSE OF LORDS AND FINANCIAL MEASURES

HERBERT HENRY ASQUITH

(afterwards Earl of Oxford and Asquith)

House of Commons, 7 April 1910

(16 H.C. Deb., 5 s., 640 ff.)

[DEBATES on the relations between the two Houses in regard to financial measures were continued, on the Resolutions brought forward by the Asquith Ministry.]

I will not go into any very obscure and antiquarian researches. No one who understands anything of our Constitution supposes that the House of Commons started on its existence, like Minerva emerging from the brain of Jupiter, clothed in the full panoply of financial or of any other kind of independence. Nothing of the sort. The progress of this House in asserting its independence in matters of finance was slow and tentative and has been the work of centuries, and the importance of the precedents of 1628 and 1671, to which my right hon. and learned Friend thought it was almost disingenuous on my part to draw the attention of a popular audience, is not as establishing at that day that the constitutional right of the House of Lords to reject Money Bills has been affirmed or approved, but as showing the steps upon the road, the landmarks on this great constitutional highway by which, stage by stage, we eventually have attained that result. None of these is irrelevant. I am not going into the details, but I will just summarise the effect of them.

In 1628, when the change was made in the form of the Preambles of Bills, the importance of these things is that they were acquiesced in. They were not merely empty or boastful assertions on the part of this House of privilege which was not acknowledged elsewhere. When the Amendment was made as to the words which had always



previously occurred in the Preamble of every Money Bill, as they occur now in the Preamble of every other Statute, which made the Lords co-partners in the granting of public money for the Crown—when that motion was made on the recommendation of a Committee of this House, containing the greatest lawyers in the land, and insisted upon by this House, and inserted, from that day to this, in the Preamble of every Money Bill which received the Royal Assent, although there was at first demur on the part of the House of Lords, it was ultimately acquiesced in, and there was established as a matter of right what had long been a right only from usage, namely, that this House, and this House alone, was concerned with the initiation of the granting of public money.

That is the first step. It may not, with all deference to my right hon. and learned Friend, be at all irrelevant to bring this first great step on the highway prominently to the notice of this House and of our fellow-countrymen outside. What is the next step? In 1628, it was established that the Lords had no share or voice in the granting of taxation. I pass over what occurred in 1640. The next step was that in 1671 and 1678, when the question was the claim of the House of Lords to amend a Money Bill, and the effect of what was done in this House, of the Resolution then passed, and of the usage which since prevailed is the second step, which was to deny to the House of Lords any share in the application of money granted by Parliament.

These are the two steps. First of all, you deny to the Lords the right to a share in the grant of Aids and Supply, and you deny to them a share in the rights as to the application of the grant. In both cases without any Act of Parliament, without any change in the statute law of the Realm, the assertion made by this House was acquiesced in and assented to implicitly by the usage which has ever since prevailed.

My right hon. Friend, who is a great lawyer and constitutional authority himself, in his very interesting speech the other day, admitted that, as regards initiation and

amendment, whatever the legal rights of the House of Lords, their constitutional powers have disappeared by disuse, and by disuse, let me point out—for it is an important distinction—not merely arising from the absence of occasion to use it, but arising from the fact that, whenever this House directly challenged the right of the House of Lords to interfere, the House of Lords have not taken up that challenge, but have acquiesced in our decision.

Now we come to the third step—the disappearance of the power of rejection. I speak not of the legal right, but of constitutional power. Is it not a very remarkable fact that, from the time of the Revolution until 1860, when the House of Lords rejected the Bill for the repeal of the Paper Duty, not one single case has been produced by any one of the great constitutional authorities, who have addressed the House and the Committee on this subject, of the House of Lords rejecting during 170 or 180 years a purely financial Bill sent up from this House? Not one case. It is quite true, as the Attorney-General has said, that there were thirty or forty cases of a trivial nature, and those were not rejection of financial proposals, but what were called in those days, fiscal Bills for the regulation of trade, and which would not come within the ambit of the claim made by the House of Commons.

Here there are two most significant facts which I ask the Committee to consider. If it were not that the House of Lords tacitly and by acquiescence and by user had acknowledged they had no constitutional right to reject a purely financial measure, and as to which, as my hon. and learned Friend said the other day there has been no answer, what was the origin and doctrine of tacking, or what is called in Parliamentary phraseology multifariousness? When the House of Lords rejected a Bill on the ground that it was multifarious, on the ground that there had been annexed to financial proposals, proposals not germane, why did they resort to that other ground, and why did they take their stand on that ground? If they had constitutional power to reject a Finance Bill in the

abstract, there was no necessity to talk about tacking. It was simply because the Lords recognized that, as regards rejection to the same extent as regards either Amendments or initiation, their constitutional power was gone, and they took refuge in this doctrine of tacking, and from time to time a controversy arose as to whether a particular measure was really financial or not.

That is the first indisputable fact in this chapter of constitutional history. There is another which I think is equally significant. Why was it that in 1860, when the Lords did, for the first time, as regards admittedly purely financial proposals of a serious character, exercise their legal right of rejection, why was it that there was all this tumult and turmoil, and a Select Committee appointed and solemn Resolutions passed. It was because every great authority in this House, even so Conservative as Lord Palmerston, was filled with indignation and surprise at an act absolutely unprecedented, and Resolutions were passed by this House which, while they recognized, I agree, and which no one disputes, that the House of Lords has the legal right to reject a Finance Bill, asserted at the same time that this House regarded the exercise of that right, the legal right, with the utmost jealousy, and that they had power in their own hands, and would use the power to prevent it if necessary. . . .

I am going to read what I believe is the best authority that can possibly be given, and that is the authority of Mr. Gladstone, the Chancellor of the Exchequer who proposed the repeal of the Paper Duty, and who in the subsequent year amalgamated in one Bill the whole of his financial proposals. I am reading from a speech Mr. Gladstone made at Edinburgh in September, 1893, immediately after the rejection of the Home Rule Bill by the House of Lords. Having described how, in 1860, the House of Commons passed a Bill for the abolition of the Paper Duty, and that the House of Lords thought fit to reject it, he goes on:

'What happened? The year 1860 passed quietly, the year 1861 arrived, and the House of Commons bethought itself

of its position. The House of Commons had got then into the habit of sending to the House of Lords separately its financial proposals. The consequence was that those proposals, taken one by one, were at the mercy of the House of Lords.'

That is to say, legally at the mercy of the House of Lords.

'The House of Commons adopted a remedy beautifully simple—they determined to combine for the future all their financial proposals in one Bill, and any Assembly that threw out that Bill would have stopped Supplies and deranged the whole Services of the country.'

He prophesied what would happen.

'They knew very well that the House of Lords was not likely to enter upon a proceeding so obviously quixotic! Since the year 1861 all the financial proposals have been joined in one Finance Bill. The consequence has been that the House of Lords during those two-and-thirty years has been totally and absolutely excluded from all influence whatever upon the finances of the country.'

That is Mr. Gladstone's recollection of what took place in 1861. Let the House observe there, again, that it was not as if this were a new practice. What the House did in 1861 was to recognise the practice to which, as I have said, no solid exception has been quoted in this debate as having occurred during 150 years, and to safeguard the observance of that practice by throwing the whole of the financial proposals of the year into one Bill. . . .

Finally, we have the authority, and as the right hon. Gentleman is here, he can tell us what the interpretation of his language is, the authority of the right hon. Gentleman, the Leader of the Opposition [Mr. A. J. Balfour]. In a speech which many of us listened to, and which has often been quoted, and which was made in 1907, in the debate on Sir Henry Campbell-Bannerman's Resolution, he said:

'The power of the House of Lords is still further limited by the fact that it cannot touch those Money Bills, which if it could deal with, no doubt it could bring the whole executive machinery of the country to a standstill.'

I do not quote the passage for the purpose of marking any inconsistency. We have all of us been inconsistent in our time. Still less do I quote it for the cheap and paltry purpose, which I am sorry to say is so frequently pursued by the baser class of controversialists in these days of ours, to take an isolated phrase from its context disregarding altogether the occasion on which, and the circumstances under which, it was spoken, and then trying to base a charge, it may be a breach of faith, or at any rate deception. It is not for that purpose I quote it. It seemed to us not a startling or novel doctrine at all. It seemed to us at the time to be a clear, unequivocal and emphatic testimony of a witness of the highest authority to an acknowledged and undisputed constitutional understanding. If the right hon. Gentleman tells us that it was not intended in that sense, that it had some other meaning, that even the most astute and friendly of his commentators have not yet succeeded in importing into it, the House will listen with complete assurance that the right hon. Gentleman is conveying his meaning more clearly, but with a certain amount of regret that he should not have expressed himself differently.

I cite that as perhaps the last of a long series of authorities . . . to show that the constitutional power as distinguished from the right of the House of Lords to reject Money Bills is as obsolete as is their right to initiate and amend. Therefore, as I said last week, in this Resolution we are asking the House to affirm an existing and established practice. If that were not so, if you could show the power, as distinguished from the right of rejection, was a constitutionally living thing, then there would be all the more reason for getting rid of it. I say that for this simple ground: you cannot have two kings in Britain, you cannot have two masters to whom the Executive Government of this country is at one and the same time to be responsible. If you once establish the principle, the doctrine, that the House of Lords could control finance by the rejection of the Budget of the year and thereby paralyse the Executive Government of the day, then the responsibility of the

Executive Government to this House becomes a shadow and a sham, and you might just as well revive the whole paramount power and ascendancy of the Crown itself. If there is any principle which we thought, until these recent discussions, had been well established and firmly rooted in our constitutional system, it was the responsibility of the Executive Government to the House of Commons and to the House of Commons alone. That principle is involved in this Resolution, and it is upon that ground I ask the House to accept it.

## THE PARLIAMENT BILL, 1911

HERBERT HENRY ASQUITH

*(afterwards Earl of Oxford and Asquith)**House of Commons, 21 February 1911**(21 H.C. Deb., 5 s., 1742 ff.)*

[ASQUITH, as Prime Minister, moved for the First Reading of the Parliament Bill, dealing with the relations between the two Houses.]

In making the motion which stands in my name on the paper, I am afraid that I must of necessity traverse a certain amount of very familiar ground. The situation is, indeed, in some respects, almost without precedent in our parliamentary annals. The Bill which I am about to ask leave to introduce is identical in every respect with that which was read a first time by the last House of Commons in April 1910. Since then, Sir, that Bill has been submitted definitely and specifically to the electorate of the country, with the result that they have returned to this House a majority in its favour in the United Kingdom of, I suppose, something like 120, and in Great Britain of not less than 60. If ever there was a case, therefore, this may be said to be a case when a Minister may be excused, without any disparagement of the importance or gravity of the subject-matter, if he make only a brief and summary presentation of his proposals. I am more disposed to adopt that course, because, as lately as 29th March last year, I entered at this table, and at very considerable length, upon the causes, historical and other, which had brought into existence—and during these last fifteen months into acute urgency—what we call the constitutional question. I pointed out then, and I repeat now, that under an unwritten Constitution such as ours—which has developed not so much by statute as by usage—there must, in time, be a growing divergence between

legal powers and constitutional practice. A familiar illustration—perhaps the most familiar—is that of the Veto of the Crown. No Bill can now, any more than in the days of Queen Elizabeth, become an Act of Parliament and acquire the force of law unless it has received the express Assent of the Crown. Yet, whereas, as we know, Queen Elizabeth sometimes refused her Assent to half of the proposed legislation of the Session, no English Sovereign has attempted to exercise the Veto since the days of Queen Anne. No Minister would advise it. Its revival is an imaginary danger. This is a point on which, by universal consent, there is no necessity to bring the letter of the law into harmony with what has become the unbroken and inveterate usage.

But there is, and has been for more than two centuries, a similar divergence developing more slowly, but not less clearly, between the legal powers of the two Houses of Parliament in regard to finance and their actual constitutional exercise. I need not go into past history. It is sufficient to say, that until the year 1909, the House of Lords had for fifty years not attempted to interfere in any way with the financial provision of the year. It was a sudden assertion as a living and active power of a legal right that had passed into practical desuetude that was the immediate occasion of the acute stage into which the constitutional question has now passed.

Further, Mr. Speaker, in regard to their right of control over policy, over administration and over legislation, the legal relation of the two Houses, which have theoretically co-ordinate and co-equal powers, ceased to bear any resemblance to the actual fact. The House of Lords has long since ceased to have any real control over policy or administration. They debate such matters, and we read their debates with interest and with profit, but their decisions are academic conclusions and have no direct influence, and can have no direct influence, on the fortunes of the Government of the day. . . .

We, who support the policy of the Bill that I am going to ask the House to read a first time, are constantly



reproached with the intention of substituting for legislation by two chambers the uncontrolled domination of one. Yes, but what are the facts? I will only go back for fifteen years. I might carry the retrospect a great deal further if time and opportunity allowed. Take the ten years, 1895 to 1905. The constitutional question, as we know it, was then dormant. Why was it dormant? Because we lived under the unchecked rule of a single chamber. There followed the four years, 1906 to 1909. I am stating what is now one of the commonplaces, and the admitted commonplaces, of political controversy when I say that during those years, with the exception of a few instances when, in Lord Lansdowne's felicitous and memorable phrase, the conflict would not have been on favourable ground to the Second Chamber, the House of Lords resolutely opposed, and successfully defeated, the principal controversial measures passed by the largest majorities in the whole annals of the House of Commons.

The climax was reached in the autumn of 1909, when the House of Lords rejected the finance of the year. Although I am loath to assume even for a moment the mantle of political prophet, I do not think it is a very rash prediction that the judgment of history will corroborate the coolest-headed contemporary observers, that the rejection of the Budget of the House of Lords in 1909 was the most stupendous act of political blindness that has been perpetrated. I do not think I am exaggerating in the least when I say that on that fatal day, fatal to the House of Lords, not to anybody else, of the 30th November, 1909, the House of Lords as we have known it, as our fathers and our forefathers have known it, committed political suicide. But doomed institutions, like threatened men, can last a long time. . . .

The question is this: Are we to wait for relief and release from an intolerable and even a dangerous situation, a situation immediately created by the action of the House of Lords between 1906 and 1909, a situation which places not only legislation but finance at the mercy of an irresponsible and indissoluble authority, increasingly

actuated by the most naked partisanship—are we, I say, to wait until, after what must be a long and laborious process, we evolve a new Second Chamber, possessing in its size and composition the qualities which are needed for the impartial and efficient discharge of the functions, and the only functions, appropriate to such a body? In the meantime, is all progressive legislation, however clearly desired and demanded by the people, to come to a standstill? We say 'No', and the country has said 'No'. It has said so twice within twelve months—once in January last, when it approved the principle of our policy, and again when in December it gave its sanction to the definite plan in which that principle is embodied. No, the country requires a present remedy for present evils, and it finds it, as it has declared, in such a limitation of the Veto of the House of Lords as will secure that the clear and considered will, and only the clear and considered will, of the nation, shall, after the fullest opportunity for deliberation and reasonable delay, pass into law.

## THE PARLIAMENT BILL, 1911

ARTHUR JAMES BALFOUR

*(afterwards Earl of Balfour)**House of Commons, 21 February 1911**(21 H.C. Deb., 5 s., 1752 ff.)*

[BALFOUR replied to Asquith's speech, No. 36. Remarks on the practical experience gained, in subsequent years, of the working of the Parliament Act, 1911, are made in the later part of No. 25.]

Perhaps the House and the right hon. Gentleman [Mr. Asquith, the Prime Minister] will allow me, before proceeding to deal with the great subject which he has opened, to express my thanks to them and to him for having so arranged business that I am able to take part in what we all admit is the beginning of one of the most important parliamentary controversies that either we or our forefathers have seen. It is very kind and courteous of the right hon. Gentleman to take the step he did, and the approval the House was able to give is far beyond any thanks of mine. •

Now, Sir, the right hon. Gentleman began his speech and ended it by a statement that the Bill he was introducing was one which not merely in certain broad and general characteristics, but in detail and in the letter, had been submitted to and had been approved by the people. He based himself upon the election of January last and upon the election of last December. The verdict of the people given at a general election is an oracle to which many people appeal, and all, when they do appeal, find it gives them something at all events which they desire to learn, but it is seldom, I think, that a different interpretation is given by the same individual in so short a space as we have heard given to it by the right hon. Gentleman who has just sat down. It appears that not only are

democratic institutions by far the best institutions under which a modern community like our own can carry on its work—a proposition in which we all agree—but it appears that the verdict of a general election is so miraculous—the right hon. Gentleman talked a great deal of miracles, can any miracle equal this—that when the constituents choose Mr. X rather than Mr. Y, or Mr. Y rather than Mr. Z, they pronounce specifically and precisely upon a large number of utterly disconnected propositions, supported by arguments having no connection with each other, belonging to different departments of policy, and that, when they vote on all these points for Mr. X or Mr. Y, they give a final and conclusive answer. It was only ten days ago that the right hon. Gentleman seemed almost to absolve himself from the necessity of dealing with the questions of Tariff Reform or Preference because he said the country had decided about Tariff Reform and had given a verdict about Preference twice within the preceding twelve months. How can the same vote by the same men at once give a decision about Preference and Tariff Reform and at the same time give a decision about the details of a Bill—talking of miracles, can any miracle equal that? Of course everybody knows who looks behind words and things that a vote given at a general election is given for a vast multitude of perfectly public-spirited reasons—sometimes not public-spirited, but I agree usually public-spirited reasons—but everybody knows that those reasons are complicated ones and do not carry that detailed approval of a particular measure which the right hon. Gentleman in terms supposes when it happens to suit the exigencies of his argument, or whenever he wants to induce this House to carry out a particular policy which he advocates. That is really a misuse of the terminology of our free institutions.

Whether the Referendum be a good thing or a bad thing, at all events it is a decision of the people on a particular thing, but a general election, be it a good thing or a bad thing, is not the decision of the people on a particular measure. It is not, never has been, and never

can be. Of course, there are occasions on which one particular issue absolutely drowns all others. They have been few and far between, and I am not sure that I can recall a single one of which that could be said without qualification, except perhaps one of the general elections which preceded the final passing of the Reform Bill of 1832. All the general elections which I remember, and they are now mounting in number, have had mixed issues and must have had mixed issues. The ordinary issue on which the voter decides must be a complex point and one lot of voters will decide on one set of issues and another on a different set of issues. . . .

The right hon. Gentleman has advanced a view of the position of this House, which he declares to be the orthodox traditional view of the Constitution which I believe is absolutely new. He says, truly enough, that this House is the representative Chamber. So far we are all agreed. But he deduces from that, by what he seems to think an irresistible chain of logic, that, when this House has been brought into existence by the votes of the electorate, thereafter everything it does has to be considered as the action of the electorate, and that that is and has been the view of constitutional theorists, Liberal as well as Conservative statesmen, in the past. That has never been the view either of Liberal or Conservative statesmen in the past. . . . The old traditional view was that the organ of the nation was the two Houses of Parliament and the Crown. That is the old theory, and that is the sound theory. You may modify, and consciously or unconsciously you are modifying it, and you have done in past times, both the functions of the Crown, the functions of the Second Chamber, and the functions of this House. They have all undergone, either by Statute or by custom, changes and modifications from year to year. But your doctrine is utterly subversive of any true constitutional theory if you take this House in isolation and say this House, and not Parliament, represents the people, and therefore everything that it does must be taken to be done by the people for the people.

That is not the old theory. It is not the sound theory. It is not the theory on which any one who wishes to understand the working of representative institutions ought to go, nor is it the theory on which any other country has ever gone. They have never considered the First Chamber as the sole depository and authority of the people's will. They have always treated it as part of an organic whole representing the people, and, if it failed to represent the people, no doubt it ought to be modified and also changed.

Then the right hon. Gentleman goes on and says, pointing to us, 'You, who advocate the doctrine of the plebiscite, do not understand representative institutions. The people who have, historically, gone into the plebiscite are people like Napoleon,' and I think he said the Jacobins. I should like to remind the right hon. Gentleman that what Napoleon did was to appeal to the plebiscite to give him power, not on a particular measure, but to give him what practically amounted to absolute power. That is the last thing that any advocate of the plebiscite desires in this country. We desire it for precisely the opposite purpose. We say, under the Constitution, as it now works, you elect a body of absolute, it may be beneficent, but absolute rulers in the shape of a Cabinet who practically control the debate in this House, and are in no sense, as the right hon. Gentleman truly says, dependent upon the other House; and we say that, in the course of a domination of such a body as that, it may well be that they depart from the desires of the people, and that they should be referred to them on some particular and specific issue. That is the exact opposite of what Napoleon did. He did not refer measures to the plebiscite. He referred his own tenure of absolute power. We want it as a check on power which, I think, anyone must admit may be abused, and which right hon. Gentlemen think has been abused by those from whom they differ in political opinions.

The right hon. Gentleman said quite truly that there are defects in the House of Commons, but, after all, the

House of Commons, in its early months and years, comes fresh from the people, and, therefore, it represents them. This is the argument which, he says, was never answered. The argument is this. The House of Commons, when it is new, represents the people because it is new. The House of Commons, when it is old, represents the people because it is going to be new; and the individuals who compose it are so afraid of not finding approval from those who sent them that they may be trusted to give effect to the wishes of the people. If that is so, I think a little less abuse ought to be showered upon the Government of which I was an unworthy member, for the Education Act of 1902 was passed when we were a young Parliament, and, therefore, represented the people. It was within the sacred two years. On the Licensing Bill, which was passed just a year or a year and a half before we resigned, again we must have represented the people, because we were going to the people. These measures, according to the canons laid down by the right hon. Gentleman, were passed by a House of Commons which had a happy infallibility derived from the fact that it had just been elected or from the other fact that it was just going to be elected.

Whatever criticism may be passed, and possibly justly passed, upon the difficulties connected with the Referendum, it is not necessary to defend it by arguments so far-fetched and extravagant as that which the right hon. Gentleman has advanced in favour of the infallibility of this House. There are difficulties connected with it, I grant, though it is not a new thing in the mouth of Conservative statesmen. The Referendum, at all events, has this enormous advantage, that it does isolate one problem from the complex questions connected with keeping a Government in office, and with other measures which it wants to carry out and with other questions of foreign and domestic policy. It asks the country not, 'do you say that this or that body of men should hold the reins of office?' but, 'do you approve of this or that way of dealing with a great question in which you are interested?'

That is a very plain proposition, and it is much less open to the charge of bad constitutional metaphysics than the theory which the right hon. Gentleman has, with great naïveté, laid before the House as if it was a theory which had been held by himself and all the orthodox professors of Liberal doctrine right back from the early stages in the development of our Constitution. . . .

The right hon. Gentleman tells us today, as he told us before, that the Second Chamber, as he proposes to leave it, is a Second Chamber which will have large powers of modifying the legislative action of this House. I do not at all deny it. I think it will have large powers. I am not sure, if you judge institutions by their working and not by their paper aspect, that in many respects the House of Lords, as you propose to make it, may not send down more Amendments to this House than the House of Lords as it is now constituted thinks desirable. I think it is quite possible. I am not at all sure, as a Member of the House of Commons, that I greatly desire it. What I do desire, not merely as a member of the House of Commons, but as a member of a country which has grown great under an unwritten Constitution, is that there should be some safeguard which, under an unwritten Constitution, can only be provided by a Second Chamber against revolutionary changes which do not meet the will of the people, which profoundly alter the institutions under which they were born, and upon which they never were properly consulted, and which they may find changed over their heads and against their will under the leadership of gentlemen who sit on the Government Benches, but under the inspiration of hon. Gentlemen who sit below the gangway on this side [the Labour Party].

I do not think the Government have attempted any defence of this part of their plan, and it is not capable of defence. Here the Government come forward and say to us, 'You ought to alter the Constitution of the House of Lords.' We agree. They come forward and say to us, 'You ought to alter the relations between the two Houses.' We agree. They say in the next place, 'You ought to have



an efficient Second Chamber.' We agree again, and that very Government by that very Bill are going to put themselves and the majority which they control, and the minority which controls them—they are going to usurp not merely the functions which other powerful Governments had before them, and will have again—they are going to usurp the function of compelling the people of this country to accept great constitutional changes upon which they have never been consulted, of which they do not know anything up to this moment, about which you were not in a position to tell them anything at the last election, about which you used the most varying utterances, and upon which there is even at this moment no clear account given by men of authority as to what they mean to do, and for one reason or another, but for many good reasons, they do not even know themselves.

There are hon. Gentlemen opposite who seem to think that we come here as the advocates of out-worn privileges, as a party desirous of maintaining the privileges of the House of Lords, long after those privileges have lost such value, as every historian must admit they once possessed in the development of our institutions, and claiming that they alone have the secret of progress, freedom, and constitutional sobriety. That grossly misrepresents the attitude of my friends behind me. That is not my view. . . . The difficulty we foresee is a different one. The right hon. Gentleman appears to suppose that a Second Chamber must always reflect, and ought always to reflect, the precise shade of politics of this Chamber. I do not think so. It seems to me an altogether absurd doctrine. Hon. Gentlemen opposite profess and claim to be the great authors of bold originaive change. It is a great position to occupy—to be the originators of bold innovations. But, if a Second Chamber is to do its work as a revising body, it is clearly against the authors of bold changes, rather than against the timid reformers, of whom we poor people on this side of the House are the representatives, against them rather than against us that this power of criticism, and, if needful, of delay, is to be exercised. It

is really an absurd doctrine to suppose that we are going to have—or that we ought to have—a strong Radical party in this House and a Chamber in the other House which has also to be equally Radical in its complexion. In that sense I think it is absurd to talk either of the House of Lords being a partisan body, or of any Second Chamber that does its duty as a partisan body.

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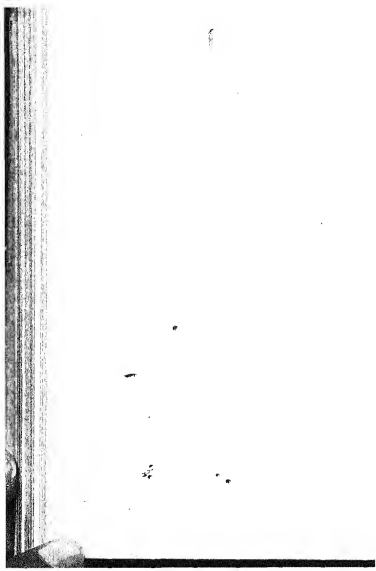
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V

HOUSE OF COMMONS  
PRIVILEGE



# JURISDICTION OVER PARLIAMENTARY ELECTIONS

*SIR SIMON HARCOURT*

*(afterwards Lord Harcourt)*

*House of Commons, 25 January 1704*

*(6 Parl. Hist. 264 ff.)*

[THE House of Commons formed itself into a Committee to consider reports regarding the decision in *Ashby versus White* (now a leading case in constitutional history). A Resolution, asserting the exclusive right of the House of Commons to jurisdiction over elections, was adopted, after some small alterations were made.]

It hath been said that the question now before you is, whether judgment being given in the Court of Queen's-bench, a Writ of Error does not lie in the House of Lords, to reverse that judgment. I cannot by any means agree that to be the question. But that which I take to be the proper question before you is, whether or no it be the sole right of the Commons of England to determine their own elections. If you are of that opinion, never let your disease grow to such a head, as to put you upon the necessity of complaining of a judgment of the Lords, but rather check it in its infancy.

It may perhaps sound harsh, that a man shall not be admitted to make use, and have the benefit of the law; and yet when that thought is thoroughly digested, I believe no gentleman in this House, but will agree that there may be many such instances, where you will not endure any suit at law. . . .

This is not an action grounded upon any statute whatsoever. It is agreed an action may be maintained where a statute gives a particular remedy, but this is an action founded upon the common-law. Whatever your privileges

are, if you will consent to an Act of Parliament to make other persons judges of those privileges, so far as you consent, if they pursue the power given them by Act of Parliament, there is no wrong done you; but an action brought at common-law is that which, I think, interferes with the inherent right of this House.

We have, I think, attained to one piece of knowledge upon this debate, that this was the first action that was ever brought of this kind; and gentlemen will not much wonder why this is brought now, when they consider what endeavours have been used to make this House contemptible. I believe this may be thought the most probable method to attain that end. . . .

I beg gentlemen to consider . . . whether anything of this kind would not make you despicable, to the lowest degree in the world, and expose electors to such mischiefs that none could endure. Upon every election that comes before you it is impossible to judge the right of election, but by the right of the electors. If you will endure any person, after you have said he has no right, to go into Westminster-hall, and bring an action in the courts there, a jury may find a verdict that the House of Commons are mistaken, and that this person hath a right, and judgment shall be given accordingly. Will not this proceeding, that very moment, submit your resolutions to the examination and censure of the inferior courts? May not they say—they vote for one another, we have detected them all? That they are a parcel of people packed together, and not one of them elected as they should be?

# SECRECY OF DEBATES

SIR WILLIAM WYNDHAM

*House of Commons, 13 April 1738*

(10 *Parl. Hist.* 802 ff.)

[THE House resolved unanimously: 'That it is an high indignity to, and a notorious breach of the Privilege of, this House, for any Newswriter, in letters or other Papers . . . or for any printer or publisher of any printed Newspaper of any denomination, to presume to insert in the said Letters or Papers, or to give therein any Account of the Debates, or other proceedings of this House, or any Committee thereof, as well during the Recess, as the sitting of Parliament; and that this House will proceed with the utmost severity against such offenders.' Cf. No. 60.]

Sir: No gentleman can be more jealous and tender than I have always been of the rights and privileges of this House, nor more ready to concur with any measure for putting a stop to any abuses which may affect either of them. But at the same time, Sir, I own, I think we ought to be very cautious how we form a Resolution upon this head; and yet I think it is absolutely necessary that some question should be formed. I say, Sir, we ought to be very cautious in what manner we form a Resolution; for it is a question so nearly connected with the liberty of the Press, that it will require a great deal of tenderness to form a Resolution which may preserve gentlemen from having their sense misrepresented to the public, and at the same time guard against all encroachments upon the liberty of the Press. On the other hand, Sir, I am sensible that there is a necessity of putting a stop to this practice of printing, what are called the speeches of this House, because I know that gentlemen's words in this House have been mistaken and misrepresented: I do not know, Sir, but I have some reason of complaint myself upon that head. I have, indeed, seen many speeches of



gentlemen in this House that were fairly and accurately taken; and no gentleman, when that is the case, ought to be ashamed that the world should know every word he speaks in this House: for my own part, I never shall, for I hope never to act or speak in this House any thing that I shall be ashamed to own to all the world. But of late, Sir, I have seen such monstrous mistakes in some gentlemen's speeches, as they have been printed in our newspapers, that it is no wonder if gentlemen think it high time to have a stop put to such a practice.

Yet still, Sir, there are two considerations, which I own weigh very much with me upon this occasion. That this House has a right to prohibit the publication of any of its proceedings during the time we are sitting, is past all doubt, and there is no question, but that, by the Resolutions that now stand upon our Votes, and are renewed every session, the printers of the papers you have in your hand are liable to the censure of this House. But I am not at all so clear as to the right we may have of preventing any of our proceedings from being printed during our recess; at least, Sir, I am pretty sure that people without doors are strongly possessed with that notion, and therefore I should be against our inflicting any censure at present, for what is past of that kind. If gentlemen are of opinion, which I do ~~own~~ I am not, that we have a power to prevent any account of our proceedings and debates from being communicated to the public, even during our recess, then, as this affair has been mentioned, they will no doubt think it very proper to come to a Resolution against that practice, and to punish it with a very severe penalty; but, if we have no such power, Sir, I own I do not see how you can form any Resolution upon this head, that will not be liable to very great censure.

The other consideration, that weighs very much, Sir, with me upon this occasion, is the prejudice which the public will think they sustain, by being deprived of all knowledge of what passes in this House, otherwise than by the printed Votes, which are very lame and imperfect, for satisfying their curiosity of knowing in what manner

their representatives act within doors. They have been long used to be indulged in this, and they may possibly think it a hardship to be deprived of it now. Nay, Sir, I must go farther: I do not know but they may have a right to know somewhat more of the proceedings of this House than what appears upon your Votes; and if I were sure that the sentiments of gentlemen were not misrepresented, I should be against our coming to any Resolution that could deprive them of a knowledge that is so necessary for their being able to judge of the merits of their representatives within doors. If gentlemen, however, are of opinion that they can frame a Resolution, which will put a stop to all impositions, and yet leave the public some room for having just information of what passes within these walls, I shall be extremely glad to give it my concurrence. But I am absolutely against our stretching our power farther than it will go consistently with the just rights of Parliament; such stretches rather weaken than give any strength to the Constitution; and I am sure no gentleman will care to do what may not only look like our claiming powers unknown to our Constitution, but what, in its consequences, may greatly affect the liberty of the Press. If we shall extend this Resolution to the recess of Parliament, all political writing, if the authors shall touch upon any thing that past in the preceding session, may be affected by it: for I do not know that any body would venture to publish any thing that might bring upon them the censure of this House.

In the mean time, Sir, I am as willing as any gentleman in this House, that a stop should be put to the practice you have taken notice of from the Chair. It has grown to such a pitch, that I remember some time ago there was a public dispute in the news-papers, betwixt two printers or booksellers of two pamphlets, which of them contained the true copy of a certain hon. gentleman's speech in this House. It is therefore high time for gentlemen to think of somewhat to be done for that purpose; and I make no doubt but that any Resolution this House shall think fit to come to, will put an effectual stop to it.

## SECRECY OF DEBATES

*WILLIAM PULTENEY (afterwards Earl of Bath)**House of Commons, 13 April 1738**(10 Parl. Hist. 806 ff.)*

[SEE note on No. 39.]

Sir: I agree entirely with the gentleman who has already spoken, that it is absolutely necessary a stop should be put to the practice which has been so justly complained of: I think no appeals should be made to the public with regard to what is said in this assembly, and to print or publish the speeches of gentlemen in this House, even though they were not misrepresented, looks very like making them accountable without doors for what they say within. Besides, Sir, we know very well that no man can be so guarded in his expressions, as to wish to see every thing he says in this House in print. I remember the time when this House was so jealous, so cautious of doing any thing that might look like an appeal to their constituents, that not even the Votes were printed without leave. A gentleman every day rose in his place, and desired the Chair to ask leave of the House, that their Votes for that day should be printed. How this custom came to be dropped I cannot so well account for, but I think it high time for us to prevent any farther encroachment upon our privileges; and I hope gentlemen will enter into a proper Resolution for the purpose.

But, though I am as much as any gentleman can be for putting a stop to this scandalous practice, I should be very tender of doing it in such a manner, as may either affect the liberty of the Press, or make it seem as if we claim a privilege to which we have no title. An honourable gentleman near me was pleased to mention the powers which the other House had of calling printers to an account for printing their Protests. It is very true, Sir,

they have such a power, and they have exercised it very lately; but we have no such power: they may punish a printer for printing any part of the proceedings of their House, for twenty, thirty, or forty years back; but then, gentlemen are to consider that the House of Peers is a Court of Record, and as such, its rights and privileges never die. Whereas, this House never pretended to be a Court of Record; our privileges expire at the end of every Parliament; and the next House of Commons is quite different from the last.

As to the question whether we have a right to punish any printer, who shall publish our proceedings, or any part of them, during our recess, which I take to be the only question at present, it may be worthy consideration: for my own part, I am apt to think that we may: because our privileges as a House of Parliament exist during the whole continuance of Parliament; and our not sitting never makes any violation of these privileges committed during a recess less liable to censure, the next time we meet as a House. However, Sir, as it has been long the practice to print some account of our proceedings during our recess, I am against punishing any person for what is past, because very possibly they did not know they were doing amiss; and if gentlemen think fit to enter into any Resolution for the time to come, I dare say it will be sufficient to deter all offenders in that way.

But that Resolution, Sir, cannot affect any person, who shall print an account of your proceedings when this Parliament shall be dissolved. There is an honourable gentleman<sup>1</sup> near me, who knows that the history of a whole Parliament was once published in a six-penny pamphlet, and their transactions set in no very favourable light, for the gentlemen who composed it. I never heard, Sir, that any succeeding House of Commons took that amiss, nor that the honourable gentleman, who was generally looked upon as the author of it, was ever called to account by either House of Parliament. Parliaments,

<sup>1</sup> Meaning Sir Robert Walpole, who, in the year 1713, wrote a pamphlet entitled *A Short History of the Last Parliament*.

Sir, when they do amiss, w<sup>l</sup>l be talked of with the same freedom as any other set<sup>h</sup> of them whatsoever. This Parliament, I hope, will never deserve it; but, if it did, I should be very sorry, that any Resolutions were entered into in order to prevent its being represented, in the present or the next age, in its proper colours. I am sure the honourable gentleman who sits near me, will agree with me in this; and whatever the other House may do, Sir, I hope we never shall stretch our privilege, so as to cramp the freedom of writing on public affairs.

But this consideration, Sir, can never affect the Resolutions which gentlemen propose to come to now. We have rather been too remiss in not putting a stop to this scandalous practice that has been complained of. I always thought that these pamphlets containing our debates were circulated by the Government's encouragement and at their expense; for till the honourable gentleman, who spoke last save one in the debate [Sir William Wyndham], mentioned the magazines in the manner he did, I have been still used to look on the publishing them as a ministerial project; for I imagined that, it being found unpracticable to make the people buy and read the *Gazetteer* by itself, it was contrived so as that the writings of the other party, being printed in the same pamphlet, it might be some invitation to the public to look into the *Gazetteer*, and I dare say, Sir, the great run which the magazines have had has been entirely owing to this stratagem. The good and the bad are printed together, and people are by that means drawn in to read both. But I think it is now high time to put a stop to the effects they may have, by coming to a Resolution that may at least prevent any thing being published, during the time of our sitting as a House, which may be imposed upon the world as the language and words of gentlemen who perhaps never spoke them.

## THE RIGHT TO COMMIT

SIR EDWARD THURLOW

*(afterwards Lord Thurlow)**House of Commons, 25 March 1771**(17 Parl. Hist. 136 ff.)*

[CERTAIN printers were ordered to attend the bar of the House of Commons for printing reports of debates. One of them gave the messenger of the House into custody for assault. The Lord Mayor and two Aldermen discharged the printer as unlawfully arrested. This speech and Nos. 42, 43, and 44 were made in a debate on the question of committing the Lord Mayor and an Alderman (Members of the House) to the Tower. It was resolved to commit; but the prisoners were treated as heroes in the City. Debates were subsequently published without restraint.

The inclusion of observations of four speakers on this occasion is justified not only by reason of the importance of the immediate issue, but also because of the other constitutional issues involved.]

Sir, it is not a little to be lamented, when gentlemen take upon them to talk about the violation of our laws, or the perversion of our Constitution, that they are so very indifferently qualified to reason upon the subject, and so apt to make the wantonness of their wishes the criterion of their conviction. Though this, Sir, is the first case of the kind that has ever claimed the cognizance of the House, though it is the first time a magistrate of any corporation ever presumed to set his municipal authority in opposition to our orders, you hear a number of young gentlemen, wholly unacquainted with the laws, deciding peremptorily on the question, and, with a very peculiar modesty, deciding individually on a point where they

expressly deny the power of decision in the whole representation of the British people.

For my own part, Sir, I supposed this House, and I know my supposition is constitutionally founded, to be superior in power to all charter jurisdictions, and to act upon principles common not only to itself, but to all other courts. Every court, Sir, has its peculiar regulation, and the law of Parliament is the rule of our proceedings. These uninformed declaimers on the nature of our jurisprudence should recollect that we have several laws in this country besides the common law: We have, for instance, the admiralty, the civil, and the ecclesiastical law; we have, besides, the law of Parliament, which is as much a part of the Constitution as any other law, and would be acknowledged such, even by the learned serjeant who lately spoke, was he seated on any one of our benches. The Upper House has a jurisdiction in common law, but all questions must come before it by appeal; it can agitate no judicial point originally, and, on that account the Judges attend to give their advice in matters of legal determination. The Upper House has, moreover, its law of Parliament, as well as this, but in that the judges never interfere. They leave it entirely to its only arbiters, and possibly, did they ever meddle, they would have a speedy reason to repent of their temerity.

Having thus, Sir, proved the law of Parliament to be as much a part of the Constitution as any other law of the land, I now come to say that Miller, the printer, was apprehended by this law, and that, of consequence, his commitment was perfectly legal. What could be more preposterous or more daring in the city magistrates, therefore, than to say a legal commitment was illegal, and to discharge, by course of common law, a man apprehended by the course of parliamentary law? Lord Coke says that it is not within the province even of the Judges, solemnly assembled in their judicial character upon the Bench, to define the privileges of Parliament. How, then, can it come within the province of an ignorant mayor, or a turbulent alderman? Is the chief magistrate

of London to usurp a power which the King himself does not aspire to? or are the charters of the citizens to be put in competition with the united majesty of the British people? Sir, I should be astonished how we were able to restrain our indignation, if the folly of our reformers was not equal to their arrogance. Here, Sir, it is allowed by the law that we shall be the only judges of our privilege, yet a corporation-justice is daring enough to limit the line of our authority, is daring enough to pronounce this to be no breach of privilege, which we, the sole judicature of the offence, declare a very high one, and, with an insolence unparalleled in the annals of this country, releases the delinquent whom we ordered to be taken up by our officer. At what other period would an outrage of this nature be tolerated? The breach of parliamentary privilege was the beginning of all those excesses which at length brought the unhappy Charles to the block. Yet it is now the glory of a London mayor to trample upon our rights, and we are even told by our members that nothing is so meritorious as this audacity.

Sir, it is urged, by the popular advocates, that the Lord Mayor, in pursuing a contrary conduct, would have violated his official oath, and that we are in fact punishing him because he refused to be guilty of perjury. Give me leave, however, to observe, Sir, that the Mayor was sworn to observe the laws of the land, as well as the laws of the city; in violating the privileges of Parliament, therefore, he ran into the very crime he was so conscientiously studious to avoid; because these privileges, as I have repeatedly insisted, make a part of the *lex terrae*; and are so acknowledged by the Courts at Westminster. On the other hand, Sir, I deny that he would have committed a perjury by submitting to the resolutions of this House, because this House was the only tribunal which could take cognizance of Miller's offence; his Lordship, in determining, shewed his ignorance as much as his disregard of law; for the matter did not come regularly before him: he might have decided with as much propriety upon a Chancery suit as upon our privileges; to



act legally he should have dismissed the complaint, and known that little charter-grants of a city were not to be opposed against the general laws of the Kingdom.

But admitting, Sir, that the Mayor has all the merit popularity is pleased to give him, for acting in conformity to what he believed to be the law; are we not to follow his example and conduct ourselves by what we know to be so? Shall it be mentioned to the glory of an individual that he maintained the supposed rights of a corporation; and shall it be said that this House is dishonoured in maintaining its confirmed privileges? . . . The very word privilege means a power of dispensing with the laws; this dispensing power was placed in our hands that temporary remedies might be applied to unexpected evils. Where could it be more safely trusted for public good than with the people themselves? We are their delegates, and in chusing us they should be doubly circumspect, when they consider with what an ample jurisdiction they invest us. Whatever attacks the independency of this House attacks the Constitution, and, whether it proceeds from the Throne, or the constituent, it is equally our duty to repel it; for these reasons I am heartily for the commitment, and cannot but compliment your lenity in the mildness of his punishment.

## THE RIGHT TO COMMIT

*JOHN DUNNING (afterwards Lord Ashburton)**House of Commons, 25 March 1771**(17 Parl. Hist. 139 ff.)*

[SEE note on No. 41. Dunning, who was generally admitted to be one of the greatest lawyers of his time, and who had a sound claim to be made Lord Chancellor in 1782, is best recollected as the mover of the Resolution, in 1780, that 'the influence of the Crown has increased, is increasing, and ought to be diminished'.]

Sir, the hon. and learned Gentleman who spoke last [Mr. Attorney-General Thurlow] has, in my opinion, misapprehended the ground of the debate: he concludes, because we have an authority to seize and commit in cases of treason, that we must necessarily have an equal authority in cases of less importance: but this reasoning is self-refutory to the meanest apprehension; for the punishment of particular crimes is left to the established courts of law, and we never interpose but in times of particular exigence, where there is a conspiracy against the State, or some reasonable ground of general alarm for the nation. To quit the legislative for the judicial character, upon trivial occasions, and to check the operations of law by the exercise of privilege, must ultimately sap the very foundation of the laws, undermine the pillars of legal rectitude, and overturn the glorious fabric of the Constitution.

Sir, the great advantage of a legal government consists in the general knowledge which the people have of those ordinances by which they are governed. On this account Cicero, and the wisest of the ancient statesmen, condemned the ostracism of the Athenians, and those wanton exertions of privilege among the Romans, which, like our bills of attainder, left him to be punished by laws,

which were instituted subsequent to the particular crime of which he was accused.

Sir, the principle at present adopted by the House operates, in my opinion, as a perpetual bill of attainder. The subject does an action which he conceives to be innocent, because it is not prohibited by any specified law; the House of Commons disapproves this action, they order the man to be seized, commit him indefinitely to prison, and when he applies for redress to the courts of law, the Judges are deaf to his complaint, because he has been oppressed by the privilege of parliament.

I know, Sir, it is urged, that, without a power of punishing every contempt which is offered to your authority, there must be a speedy termination of your weight, if not of your actual existence. Give me leave, however, to observe that, while your authority is constitutionally exerted, it will always be implicitly obeyed; while you consult the good of the people, the people will consult your honour; but when you once manifest a spirit of despotism, they will manifest a spirit of resistance: the English are to be governed, but never to be oppressed: they are, in the language of the vulgar, to be led, but not driven; and they will always resist when they see a palpable attack upon the Constitution.

As I speak, Sir, to support the cause of justice, and not to advance the views of any party whatever, I shall readily acknowledge that the courts of law have acquired, through necessity, a right of punishing contempts, because, without such an authority, there would be a total end of their jurisdiction. But, even in the courts of law, I do not hesitate to pronounce the power contradictory to the principles of Magna Charta. The necessity, however, induces us to tolerate the invasion, for without such a toleration, every man would claim a privilege of obeying, or disobeying; the decision of our Judges at his own discretion, and all, as the poet says, would consequently be 'anarchy and uproar'.

But, Sir, if punishing contempts in Court is a power which ought to be exercised with the nicest circumspec-

tion, and if nothing but the most indispensable necessity can thus properly make the benches of justice, Judge and jurors in their own cause, how careful should we be, not to grant this power where the necessity does not exist, and where the exercise of it is as plainly repugnant to the letter of our laws, as to the spirit of our Constitution. The hon. and learned member who spoke before me says that in England there are several kinds of law, and that, when your messenger was apprehended by one law, he was discharged by another: this he insists to be apparently inequitable: but why will not gentlemen, when they talk of equity, tell us openly what it is? If we have privileges that must not be violated, in God's name let us tell the people what they are, that they may avoid the violation.

Sir, the House is, I own, in many cases the sole judge of its own privileges, but there are many others, in which if they come incidentally before a court, the Judge must inevitably take them under his cognizance. Suppose, for instance, that the serjeant at arms, in executing your warrant upon the printers, had been killed, and that the homicides were afterwards tried for the fact; will any man say, Sir, that in such a case your privileges would not be cognizable before another jurisdiction? Will any man say that the Judge was not to enquire whether the warrant under which the serjeant acted was legal or illegal, or whether the homicide was a justifiable defence, or an absolute murder? Surely no man who wishes to retain the constitutional mode of trying by jury will be hardy enough to assert anything like this; and, if nothing like this is to be asserted, what becomes of the fashionable doctrine, that the Commons upon all occasions are the only expounders of their own privileges?

Sir, our whole Constitution is a political kind of chaos, and depends upon the preservation of opposing elements; the King has his prerogative—the Peers their jurisdiction—and we our privileges; we are equal in legislative importance, even to the two hereditary estates, but we are not superior; we are independent with respect to them, but not so with relation to the people; the people were

the original spring from which the three streams of government proceeded, and must in fact be paramount to all. They will therefore naturally enquire how we, their representatives particularly, have executed our trust, and will as naturally execrate our names,

If once we vilely turn that very power,  
Which we derive from popular esteem,  
To sap the bulwarks of the public freedom.

Sir, the people have already opposed us by their magistrates, and they will oppose us farther by their juries; though were we in fact as much respected as we are already despised; as much esteemed as we are universally detested, the establishment of tyranny in ourselves, who are appointed for no purpose but to repel it in others, would expose us to the abhorrence of every good Englishman. Let us, therefore, stop where we are; let us not justify oppression by oppression, nor forget our own posterity, if we are regardless of our country. Let even the abject principle of self, which actuates, I fear, too many of my auditors, for once operate in the cause of virtue. We have sons and we have daughters to leave behind us; they will have children, and these children will have their successive generations. Shackle them not, therefore, before they are born. . . .

Sir, gentlemen are exceedingly indignant at the supposed temerity of the two magistrates, now labouring under the displeasure of the House; and ask, with a tone of resentful surprise, if the corporation of London is to be independent of the Commons regularly assembled in Parliament. Why not, Sir, if the law has made them so? If the law has indulged the citizens with particular immunities, why are these immunities to be invaded? We sit here for the professed purpose of guarding the laws, not for the professed purpose of trampling them under foot: we ourselves are the creatures, not the masters of the constitution: we have no existence but a legal one; we can have no existence but a legal one, and consequently it is as weak as it is wicked in us to overleap the established bounds of legality.

## THE RIGHT TO COMMIT

CHARLES JAMES FOX

*House of Commons, 25 March 1771*

(17 Parl. Hist. 148 ff.)

[SEE note on No. 41. Fox was still young, and had not yet developed his democratic sympathies. This speech involved him in unpopularity with the masses; and he was attacked by a mob two days after making the speech, while on his way to the House.]

It is urged, Sir, with great gravity, by many gentlemen in opposition that the House of Commons, as the creatures of the people, have no right whatever to exercise an authority over their constituents. This position, Sir, breathes the spirit of freedom with a vengeance, for it lays the axe to the root of all subordination at once, and puts an entire end to the whole system of constitutional government.

No doctrine, Sir, was ever yet broached in this Kingdom, either so dangerous, or so ridiculous as that which seriously insists that the House of Commons, because elected, is without jurisdiction, and that the people, because the origin of all power, must therefore be exempt from all obedience. The people make the laws, as well as the legislators; but will any advocate of licentiousness presume to say, because they are the fountain of authority, that they are of consequence discharged from a submission to legal institutions? The law, Sir, is as much the creature of their formation as this House; yet surely it will not be said that they are to tread it under foot, or to launch out into the barbarisms of their natural state, after solemnly forming a compact of civil society.

The only point, therefore, remaining to be discussed is, whether the people at large, or this House, are the best judges of the public welfare? For my own part, Sir, I shall not hesitate to pronounce positively in favour of this House. What acquaintance have the people at large

with the arcana of political rectitude, with the connections of kingdoms, the resources of national strength, the abilities of Ministers, or even with their own dispositions? If we are to believe the very petitions which they have lately presented to the throne, they are unequal to those powers which the Constitution has trusted to their hands. They have the power of electing their representatives; yet you see they constantly abuse this power, and appoint those as the guardians of their dearest rights whom they accuse of conspiring against the interests of their country.

For these reasons, Sir, I pay no regard whatever to the voice of the people: it is our duty to do what is proper, without considering what may be agreeable; their business is to chuse us; it is our business to act constitutionally, and to maintain the independency of parliament: whether it is attacked by the people or by the Crown, it is a matter of little consequence; it is the attack, not the quarter it proceeds from which we are to punish; and, if we are to be controuled in our necessary jurisdiction, can it signify much, whether faction intimidate us with a rabble; or the King surround us with his guards? If we are driven from the direct line of justice by the threats of a mob, our existence is useless in the community. The minority within doors need only assault us by their myrmidons without, to gain their ends upon every occasion. Blows will then carry what their arguments cannot effect, and the people will be their own agents, though they elect us to represent them in parliament. What must the consequences be? Universal anarchy, Sir. Therefore, as we are chosen to defend order, I am for sending those magistrates to the Tower who have attempted to destroy it; I stand up for the Constitution, not for the people; if the people attempt to invade the Constitution, they are enemies to the nation. Being, therefore, Sir, convinced that we are to do justice, whether it is agreeable or disagreeable, I am for maintaining the independency of parliament, and will not be a rebel to my King, to my country, or my own heart, for the loudest huzza of an inconsiderate multitude.

THE RIGHT TO COMMIT  
COLONEL ISAAC BARRÉ

*House of Commons, 25 March 1771*

(17 *Parl. Hist.* 150 E.)

[SEE note on No. 41. Barré's invective was remarkable and, on this occasion, was described as terrifying.]

Sir; since I had the honour, I should say the dishonour, of sitting in this House I have been witness to many strange, many infamous transactions; but, since I could call myself a member of the British House of Commons, never was my indignation roused with such an abominable proposal as that which now disgraces even this assembly. A representative of the first city in the Empire, or perhaps in the world, is to be treated as a State criminal for supporting the general rights of the nation and the peculiar privileges of his fellow-citizens. It has been proved to a demonstration that your claim of privileges was meant as a bulwark only against the encroachment of the Crown, and not as a check upon your constituents. It has been clearly shewn that you have acted contrary to Magna Charta, and that the magistrates accused have adhered to the law of the land.

Nor is this all. You have been convicted of invading the peculiar franchises of the city, and of trampling on numerous statutes made in its favour—while the objects of your impotent malice have only acted according to the dictates of conscience and the religion of their oath. You will punish them, because they would not, for the purposes of your tyranny, betray their trust, and be guilty of perjury. What can be your intention in such an attack upon all honour and virtue? Do you mean to bring all men to a level with yourselves, and to extirpate all honesty and independence? Perhaps you imagine a vote will settle the whole controversy? Alas! you are not aware



that the manner in which your vote is procured remains a secret to no man. Listen; for, if you are not totally callous, if your consciences are not seared, I will speak daggers to your souls, and wake you to all the hells of guilty recollection. Guilt, as the poet justly observes, is the source of sorrow; trust me, therefore, your triumph shall not be a pleasing one. I will follow you with whips and stings, through every maze of your unexampled turpitude, and plant eternal thorns beneath the rose of ministerial approbation.

Answer me; Whence did this motion take its rise? Where was the scheme concerted? Did it originate in this House? Is it the legitimate offspring of this Assembly? No; it is the abortion of five wretched clerks, who, though a disgrace to this House, have the management, let me correct myself, the mis-management, of all national affairs. These pitiful drudges brought the Treasury into the scheme; the Treasury influenced the junto of Carlton-house; Carlton-house set all the administration in motion; and the administration gave life and vigour to the machines that compose the majority. Thus are you played off like puppets, for the entertainment of the magician that acts behind the curtain.

Do you not blush at such infamy? Do not your cheeks burn with conscious shame at being mere walking plants, perfect oxen in a stall, fed by the hand of your master, and forced to draw in his yoke? By heaven, I had rather not be, than drag such a heavy, such a galling, such a detestible chain. There are, indeed, those of whose commands I should be proud, because their service is perfect freedom. The instructions of your constituents you should always be ready to obey. But you have inverted the maxim of the Gospel, and made the servant greater than his master. You, who are only deputies or factors, have usurped a power not only superior to that of your creators, but destructive of the very rights by which they exist as freemen, and by which you yourselves exist as representatives. In the gulf of your privileges you have swallowed up the birthright of the people, who are

ultimately paramount to all, the three branches of the Legislature. Had you been as tenacious of your duty as of your interest, you would have first provided for the safety of the people's rights, and then entered into the discussion of your own privileges. . . .

## PAPERS EXEMPT FROM LIABILITY TO LIBEL

SIR ROBERT PEEL

*House of Commons, 30 May 1837**(38 Parl. Deb., 3 s., 1129 ff.)*

[THIS debate was occasioned by a declaration, in the Court of King's Bench (in Stockdale versus Hansard), in 1836, adverse to the plea of 'privilege' in respect of publication of papers by order of the House of Commons. Resolutions were submitted to the House asserting its power 'to order the publication of all such papers as it shall think conducive to the public interest; declaring that the institution of any action for the purposes of bringing the privileges of Parliament into discussion before any tribunal elsewhere than in Parliament, is a high breach of privilege; and further, that for any court or tribunal to assume to decide upon matters of privilege inconsistently with the determination of either House of Parliament thereon, is contrary to the law of Parliament, and a breach and contempt of the privileges of Parliament'. These Resolutions raised very large issues. The narrower issue, in regard to parliamentary papers, was dealt with by passing a special statute (the Parliamentary Papers Act, 1840), after further litigation had embarrassed the House of Commons by a decision in opposition to the assertions of the House. This decision was made in the leading case of Stockdale versus Hansard in 1839.]

I should be sorry to come to a decision without shortly expressing the ground on which I shall vote in favour of the resolutions proposed by His Majesty's Ministers.

The first impression of every man, and particularly of those who have not paid much attention to this subject, will unquestionably be adverse to the principle upon which the Report of the Committee is founded; for it must appear manifestly unjust that any public authority

should have the power of authorising the publication and the sale of libels upon the characters of individuals. At the same time, however, I am convinced that upon mature reflection those who have given way to this first impression will ultimately acquiesce in the absolute necessity, if the House of Commons is to continue in the discharge of its constitutional powers, of maintaining this privilege of publication, and in maintaining for itself the exclusive right of judging of the extent and nature of that privilege.

Is it the duty of the House of Commons to institute free inquiries into alleged abuses of public trusts? If that is its duty, if it is one of the public functions of the House to institute those inquiries, what is the limit which is to be placed, or the discretion to be exercised, in conducting those inquiries? Is it not manifest, if the House does not possess a free and unfettered power of compelling the appearance of witnesses and of instituting a free and unfettered inquiry, that their privilege, or their duty rather, as the grand inquest of the nation, must be at once paralysed?

But, if the House of Commons possesses the power of compelling the attendance of witnesses and of compelling those witnesses to make a disclosure of the truth, ought they not, having so done, and having given publicity to such evidence, to protect those witnesses from the consequences of that disclosure? And, as to the publication of the evidence, may not that publication be essential in order to satisfy the public mind with respect to the grounds of their legislation, and to make the constituency of the country aware of the principles upon which their representatives act? I would say, therefore, that from the dictates of reason, and from what common sense suggests, the House of Commons ought to have the power, subject to no extrinsic control, of exercising their inquiries freely, without being exposed to any legal results.

But it is not upon reason and common sense alone that I found this principle. I found it upon the uniform practice of Parliament. There is a series of cases showing that for the last 120 years Parliament has been in the practice

of instituting these inquiries. It has instituted inquiries with respect to allegations of abuses in the East Indies; with respect to allegations of abuses in the election of members of Parliament; with respect to allegations of abuses as to the slave trade in the West Indies; and as to the management of the cotton manufactories in this country.

The question, then, briefly is, whether the House is to continue in possession of the power of instituting inquiries into alleged abuses or not? If it is to inquire, then does it not of necessity follow that it must have the power to summon and examine witnesses? If, indeed, we were private individuals, we would have no right to publish the truth to which those witnesses may bear testimony; but neither would we have the right to make the inquiries. It is because, as a public body, we have authority to make these inquiries and to submit the result to the public that we are to be privileged. This privilege, it would appear, has been exercised for 120 or 130 years, and during that time Mr. Warren Hastings has been attacked, and many other persons of the highest eminence have been attacked by its exercise, or I ought rather to say would have been attacked if the inquiries respecting them had been instituted by an unauthorised body or by individuals. Up to the present time, however, it has been the doctrine that Parliament has the right to institute inquiries of this nature. But, on an allegation being made by a Report of a Committee that a Mr. Stockdale had published an obscene pamphlet, an action was brought against an officer of the House of Commons for the publication.

What say the authorities? I will take the authority of Lord Tenterden, who states that he doubts whether there exists the privilege to sell a libel. Lord Denman says that, if this publication had been written or printed merely for the use of the members of the House, it would have been a different thing. We have then, this admission that there is little doubt of the authority of Parliament to institute these inquiries, and that there is also little doubt of their right to print, for the use of their own members, a fair

statement of that which is disclosed. Now, I will ask for no further conclusion in favour of the principle for which I am contending, which is, that the House has the power of protecting parties from the consequences of giving evidence which the House has compelled them to give.

The only remaining question is, whether there is a legal distinction between printing for the use of members and the subsequent sale. I imagine that there is not; and, if so, the doctrine that the sale of publications printed for the members subjects the officers who print them to question by the Court of King's Bench must be abandoned. Has a man a right to give away a libel? He who circulates a libel merely for a mischievous purpose is equally liable to legal question as the individual who sells it for profit. In the eyes of the law there is no distinction between publication and sale. But if this is so, how happens it that a different view would have been taken of this case if the publication had been only for the use of members?

Let us look at the absurd consequences which would result from the adoption of such a principle. It has been the practice, before that of sale [of parliamentary papers to the public] commenced, to print more documents than were required for circulation among the members, and to distribute them freely; but, if the principle which has been laid down could be sustained, should the Speaker give a single copy, he would be subject to prosecution. Though members are entitled to their copies, if, after having obtained them, they lend them, or, if they cease to be members, are they to be subject to legal question? Suppose a member goes to his constituents and refers to the documents which, as a member, he is entitled to use—suppose, in explaining his conduct to his constituents, he finds it necessary to advert to some statement in the documents, and that such statement throws severe aspersions on certain proprietors in the West Indies, is he not to be permitted to state the details of those transactions by which his conduct has been determined? Then, will the newspaper that publishes a report of his speech be

liable? I refer to these things merely to show the absurdity of the distinction between publications for the use of members and the subsequent sale. It is impossible to maintain such a distinction. If we admit the right to publish for the use of members, and the right of the member to publish in vindication to his constituents of the course he has pursued, then we must allow that there is no legal distinction of such a nature as that which I have described.

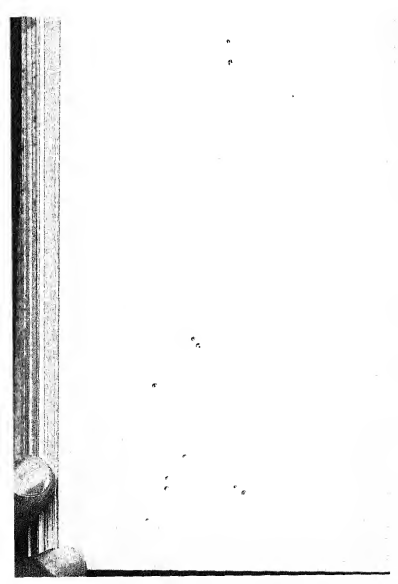
If it can be shown that this privilege is necessary for the protection of the functions of members, and that for a long series of years there are precedents for the sale of the papers, I cannot conceive on what grounds we can refuse to assert our privilege, because now for the first time it is questioned by Mr. Stockdale. A Committee which sat on this case would not even be able to make a report without being liable to question, for they thought it necessary, to enable the House and the country to judge of the matter at issue, to print a copy of the declaration filed in the King's Bench on the 7th of November, 1836, and, in the course of that document, it was stated that John Joseph Stockdale had published a book of a most disgusting nature, and indecent in the extreme. If the King's Bench can interfere in this way with the privileges of the House, it may as well at once close its doors as a court of inquiry. . . .

I admit that the power claimed by the House is arbitrary, and that, therefore, it becomes us to use it with the greatest possible caution and discretion. When I call it arbitrary, I mean that it is an exclusive jurisdiction, admitting no co-ordinate authority; but when I compare the disadvantages likely to arise from the exercise of the power with the inconvenience which must result from the House being deprived of it, I find there is the strongest reason for the House continuing it in its possession.

VI

HOUSE OF COMMONS  
IN REGARD TO FOREIGN POLICY





INFORMATION ON FOREIGN POLICY  
 WILLIAM PULTENEY (*afterwards Earl of Bath*)  
*House of Commons, 3 March 1738*

(10 *Parl. Hist.* 591 ff.)

[PULTENEY's claim on behalf of the House, that it should be kept informed in regard to foreign policy, was made in a debate regarding petitions on 'Spanish Depredations'. Similar arguments were frequently used on behalf of the Opposition at this period. See, e.g., No. 48 and 9 *Parl. Hist.* 272.]

We have in this kingdom several councils; we have a Privy Council; a Cabinet Council; and, for what I know, a more secret and less numerous council still, by which the other two are directed: but the Parliament is His Majesty's great and chief council: it is the council which all Ministers ought, both for their own sakes and their masters', to advise His Majesty to consult with upon every affair of great weight and importance; for, from all our histories, we shall find that those kings have been the most happy and glorious who have often consulted with their Parliaments; and that those Ministers have always gone through their administration with the greatest ease and applause, and have divested themselves of their power with the greatest safety to themselves, which seldom happens to any but those who have advised their masters to depend chiefly upon the advice of their Parliaments.

In our Privy Council, Sir, in our Cabinet Council, and in any more secret council, if there be any such, the hon. Gentleman [Sir Robert Walpole] may be supposed to have sway; nay, it may be even suspected that he has, under His Majesty, the chief direction of each; and therefore he may, some time hereafter, be made to answer for their determinations; but it cannot be suspected that he has the direction of either House of Parliament, nor are

we to presume that he has any other sway in this House, but that which proceeds either from the solidity and strength of his arguments or from his superior art of persuasion: For which reason he can never be made to answer for any resolution of Parliament, or for anything that is done pursuant to the advice of Parliament. In all cases therefore he ought to be fond of having the advice, or at least the approbation, of an independent and free Parliament; but more particularly in a case such as the present, where the most prudent councils may not be always attended with the wished-for success. . . .

It may, Sir, have been generally observed as a rule in Parliament, not to enquire into any foreign affair while it is upon the anvil; but, even if this rule is not without exception, especially if any affair should be continued too long upon the anvil; for its being so may be a good reason for a parliamentary enquiry. But, after either House of Parliament has resolved to enquire into any affair, foreign or domestic, was it ever pretended that they ought not to call for every paper necessary for giving them a full light into that affair? Does not every one know that it always has been, and always must be, the custom of this House, when any affair is, according to order, to come before us, to call for all papers which we can suppose to have any relation to that affair? In such cases, if, among the papers called for, there be any which ought not, for the sake of the public good, to be exposed to public view, it is the business of the Crown to tell us so; but this is an answer we ought not to take from any of our own members, let him know ever so much of the secret of affairs.

## INFORMATION ON FOREIGN POLICY

SIR ROBERT WALPOLE (*afterwards Earl of Orford*)*House of Commons, 6 February 1739*(10 *Parl. Hist.* 1001 ff.)

[DEBATE on a motion for an Address to the Crown for laying before the House papers relating to the 'Spanish Depredations'. As on other occasions, the Ministry asserted that the papers could not be produced, because the success of negotiations would be prejudiced; and the Opposition pressed for production in the hope of exposing the deficiencies of the Ministry.]

Sir, I believe no gentleman who has the honour to be a member of this House supposes that we are not to examine into the nature of the Convention lately concluded with Spain, or that His Majesty intends we should not. I am sure I do not suppose any such thing: on the contrary, I hope that, when it is laid before us, we shall not only examine thoroughly every article of it, but also that we shall examine into the present circumstances of affairs both at home and abroad; which we must do, before we can form a right judgment of the Convention His Majesty has agreed to. When the several articles are particularly examined, and all circumstances duly considered, we ought then to give our most sincere opinion and advice to His Majesty; and from the view I have of our present circumstances, and what I have heard or know of that Convention, I believe the opinion of this House will be, that the concluding and ratifying the Convention was one of the wisest measures His Majesty could take; and our advice, I doubt not, will be, that His Majesty should proceed upon the foundation laid by that Convention, and endeavour, by peaceable methods, to put an end, by a definitive treaty, to all the disputes now subsisting between the two nations.

I shall grant, Sir, that in order to examine thoroughly into the nature of the Convention, and into the circumstances of our affairs both at home and abroad, it will be necessary for us to have a great many papers laid before us. But, in calling or addressing for papers of any kind, we ought at all times to be extremely cautious, especially in calling for papers relating to any transaction which is not then finally concluded. The gentlemen who have already spoken against this motion have said so much with regard to the danger and inexpediency of it at this time that I have nothing to add on that head. Only, Sir, I beg leave to advance one general observation upon what they have said, and that is that when we find ourselves obliged to take an affair into our consideration, before it is brought to a final conclusion, I do not think it would be bad policy in this House to lay it down as an established maxim, never to address for any papers upon such occasions, but to leave it entirely to His Majesty to order such papers to be laid before us as he might think necessary for giving us a proper light into the affair, and such as he knew might be safely communicated.

To apply what I have said to the case now before us: it must be allowed, Sir, that the Convention lately concluded with Spain relates to an affair not finally ended. It relates to an affair, now under negotiation between the two courts; for I shall readily agree that the articles of the Convention can at best be called but a sort of preliminary articles, which are to be further explained and perfected by a definitive treaty; and, if a satisfactory treaty may be obtained by peaceable means, and in consequence of these preliminary articles, which no man can say is impossible, it would be wrong in us to do anything, or to call for any paper, which, by being made public, might disappoint so good an effect. Now, as this Convention was, as every preliminary agreement must be, preceded by a negotiation, some things may have passed during that negotiation, which the Court of Spain would not desire to be made public, and would even look on it as a high affront, in case they should be made public.

We know how jealous princes are even of what is called the punctilio of honour; and therefore we must know that it is always dangerous to publish the transactions of a negotiation till some time after it has been concluded. While such transactions remain secret, many things may be said and done by both parties without much notice, which either party would think himself in honour obliged to resent in the highest manner, in case they should be made public. Therefore, with regard to those memorials and representations that have been sent to the Court of Spain, and must consequently be already known to that Court, it would not, perhaps, at present, be very prudent to publish them; because it might alter the present good humour which the Court seems to be in, and might render it impossible for us to obtain either satisfaction, reparation or security, any other way but by force of arms.

INFORMATION ON FOREIGN POLICY  
*WILLIAM PULTENEY (afterwards Earl of Bath)*

*House of Commons, 6 February 1739*

(10 *Parl. Hist.* 1007 ff.)

[SEE note on No. 47.]

I must observe that, when this House resolves to take any particular and extraordinary affair into consideration, it is impossible for His Majesty to know what papers or other things may be necessary for giving us a proper light of the affair. His Ministers may perhaps know, but, in former ages, Ministers have been known to conceal industriously from their Sovereign many things they knew; and such as they ought in duty to have acquainted him with; and therefore our Parliaments never trusted to the King's Ministers for giving him information in this particular. They considered themselves the affair which was to come before them; they considered what papers or other things would be necessary for giving them a proper light; and, if those papers were such as must be communicated by the Crown, they addressed His Majesty, that he would be pleased to give directions for laying such or such papers before them. It is therefore from Addresses of this House only that His Majesty can know what papers may be necessary to be laid before us upon any such occasion; and, when His Majesty sees what we address for, he may then judge whether the papers called for, or any of them, be such as ought not to be made public.

If the hon. Gentleman's [Sir Robert Walpole's] maxim were to be admitted as an established maxim for our conduct in this House, we could never address for papers relating to any public affair that had been transacted within the same century; for there is no public affair but what may probably have some papers belonging to it that ought not to be made public. At this rate, Sir, we must

always leave it entirely to His Majesty, that is to say, to His Majesty's Ministers, to lay no papers before us but such as they think may be safely communicated to Parliament; in which case, every one must see that we could never enquire into the conduct of any Minister, while he continues a favourite of the Crown; for no Minister will ever think it safe to lay any paper before Parliament that may be a foundation for, or may any way support, an accusation against himself; and, upon this maxim, he would always have an excuse for not laying such papers before Parliament, by saying that they contain secrets relating to some affair in agitation, which must not be discovered till the affair is brought to a conclusion.

This shews, Sir, how ridiculous it would be to establish such a maxim, and therefore I hope we shall continue to follow the ancient maxim of this House, which has always been to call for all such papers as we thought might contribute towards giving us a full and perfect knowledge of the affair we were to enquire into, without regarding whether or no the papers we thought necessary for this purpose were such as might probably contain some secrets of State. If any of them are of such a nature, we may appoint a secret Committee for examining into them, and reporting such parts of them as are necessary for our information; but, till His Majesty has acquainted us that some of them are of such a nature, we have no occasion for appointing such a Committee. This therefore can be no objection against our addressing for all or any of the papers now proposed to be addressed for; but, for my own part, I cannot so much as imagine that there are any important secrets, I mean such as the honour or interest of the nation is concerned in keeping; I say I cannot imagine that there are any such in our late negotiations with Spain, or in any of our late transactions relating to the Spanish depredations. I am sure they have made no secret of the claims they have lately set up against us, nor of the insults they have put upon us: on the contrary, they seem to be fond of publishing them, that the world may know how contemptuously they have used us. I do not



know but that there may be some secrets that ought to be discovered, secrets, in the discovering of which both the honour and the interest of the nation may be deeply concerned; but this surely can be no argument against our calling for papers by which such a discovery may be made; and, if any of the papers now called for can be supposed to contain secrets of such a nature, it is a strong argument for agreeing to the motion; for, without such an Address, we can hardly expect to have them laid before us.

## TREATY-MAKING POWER

## LORD THURLOW

*House of Lords, 17 February 1783**(23 Parl. Hist. 431 ff.)*

[DEBATE on the Preliminary Articles of Peace with France and Spain, which involved the cession of East Florida. Lord Thurlow asserted that the authority of Parliament was not required for the cession. His arguments, which amounted to little more than assertions, mixed with diatribe, were effective at the time and were taken to be conclusive of the constitutional position. Cf. No. 52.]

I can claim to myself no part of the attention of the House on the grounds of eloquence and oratory. These belonged peculiarly to the learned Lord [Lord Loughborough] who has so long and so ably endeavoured to fascinate your Lordships, and whose skill and address in managing the passions of his auditors are not to be equalled, and, by a man of plain meaning and sober understanding, whose only wish is to discriminate between truth and fiction, such as I am, not to be coveted. All the gay chimeras of a fertile imagination have been adduced; and I have no objection to see noble Lords indulge themselves in the display of their talents for the inventive; but I do object to their pressing their chimeras into a solemn debate, and substituting them for arguments and reason.

The learned Lord will forgive me for treating what he said lightly, as I profess, upon my honour, that my plain and narrow conception did not reach his meaning. He has thought proper to allege that the prerogative of the Crown does not reach so far as to warrant the alienation of territories, in the making of peace, which are under the allegiance and at the peace of the King. If this doctrine is true, I shall consider myself as strangely ignorant

of the Constitution of my country; for, till the present day of novelty and miracle, I have never heard that such a doctrine existed. I fancy, however, that the learned Lord has thrown down the gauntlet on this subject, more from knight errantry than patriotism, and that he was more inclined to shew the House what powers of declamation he possessed in the support of hypothetical propositions than anxious to define, or to confine, a power wisely vested in the executive branch of our Government, unquestioned as to its utility, and much less as to its existence. I am the more convinced of this when I hear the sources from which the learned Lord chose to draw his testimonies and arguments. One would have thought that when a great, experienced, and justly eminent lawyer hazarded an opinion respecting a most important point of the Constitution of this country, that he would think it necessary to produce proofs from the records and authorities of the State, or that at least he would shew that the common opinion and consent of men went with him; but, instead of this, the learned Lord resorted to the lucubrations and fancies of foreign writers, and gravely referred your Lordships to Swiss authors for an explanation of the prerogative of the British Crown. I, for my own part, reject all foreign books on the point before us. However full of ingenuity or speculation Mr. Vattel or Mr. Puffendorf may be on the law of nations, and other points, which neither are, nor can be fixed by any solid and permanent rule, I deny their authority—I explode their evidence, when they are brought to explain to me what is, and what is not the prerogative of the British Crown.

The cession of the Floridas, if at all a questionable matter, was of primary importance, and ought not to be hurried over, in half words and mere hints, at the end of a prolix and declamatory speech: speaking from my own judgment, the judgments of able men, the records of Parliament, the annals of the country, I do not think the cession of the Floridas at all a questionable matter: if it is so, it is what I am ignorant of; and if the learned Lord

will enter into the subject and discuss it at large, I will follow him; and, if I cannot establish a doctrine clearly contrary to that extraordinary idea now sported by the learned Lord, I will confess my ignorance stage by stage, and point by point, as the noble Lord shall establish the proof, of which he has ventured to be so sanguine. I am prepared to meet him, and to combat the question, not, however, with the weapons which the learned Lord had used on this night, of vague declamation, and oratorical flourishes—those I contentedly leave with all the plaudits which they are calculated and, perhaps, intended to gain—but with undecorated sense, and simple argument. It is, in my opinion, more useful to stick to that rule of reasoning and deduction, by which the mind is taught that two and two make four, than to suffer our understandings to be warped, and our eyes to be blinded by the fashionable logic which delights in words, and which strives rather to confound what is plain than to unravel what is intricate.

POWER TO MAKE WAR  
WILLIAM EWART GLADSTONE

*House of Commons, 16 July 1857*

(146 *Parl. Deb.*, 3 s., 1636 ff.)

[THE question of the propriety of the Government in undertaking hostilities against Persia, without authority from Parliament, was debated in the House of Commons. Gladstone joined the critics of the Government; and Palmerston, as Prime Minister, defended his Ministry's policy. The expenses of the war were, in fact, shared equally by the British Exchequer and the East India Company.]

The question which you have put from the Chair relates simply to a recital of facts, and I apprehend that the matter substantially before us is this: Do we consider that the case which has arisen is one which demands parliamentary notice, or can we afford altogether to pass it by? I will frankly own to the House in a few words the state of my own mind. I think that, as regards the derogation of the privileges of the British House of Commons which has taken place, words of decisive censure might be justified. At the same time, adverting to the fact, which I regard as material in the case, that these circumstances occurred prior to the dissolution, I may, for my own part, be willing to waive the pressing home of that point, provided only I can secure that the liberties and privileges of the House of Commons shall be guaranteed against the formidable dangers which are involved in the precedent which has been set up. Upon that matter I confess I entertain the greatest anxiety. I came to the House to-night with the hope that Her Majesty's Government might have been disposed to rest their vindication rather upon the specialities of the case, which made it difficult for them, we will suppose, to obtain the opinion of Parlia-

ment, rather than upon the broad assertion of the principle that, without reference to circumstances of extenuation or circumstances of difficulty, the course which they have pursued can be vindicated upon its own merits, and involves nothing that tends to disparage the dignity or to endanger the prerogatives of the House of Commons. To my mind it seems so clear as to be beyond argument that that dignity is disparaged—that those liberties are endangered by the making of war at the charge, in whole or in part, of the British Exchequer, at the uncontrolled discretion of the Ministers of the hour; without the observance of that great security which we always have that the charges of these wars and the preparation of the force necessary for conducting them should be submitted to our free judgment, not after the fact, when everything is in the past, and when no question remains except that of pronouncing our opinion upon the conduct of the Government, but before the fact, when the operations have not yet been undertaken, and when the policy about to be pursued may fall within our view, and may be dealt with according to our independent judgment.

Therefore, while I am not at all convinced of the necessity of recording our censure upon the Government, I must yet frankly own that I think it would be inconsistent with the character of this House—if I may presume to give my opinion of what its character requires—and inconsistent, also, with that jealousy with which this House always held it to be its first duty to watch the preservation of the liberties won for it by so many generations of glorious predecessors, were we to permit these circumstances to pass without notice, and to remain as matters of indifference, wholly unworthy the vote of this Assembly, either by way of censure of the past or of security for the future.

I, for one, should have been satisfied had the declarations of the Government amounted to this: 'While defending our own motives and proceedings, we grant that there is danger to the public weal in this precedent, unless it is strictly noted and marked out as a matter not

to be extended or even followed, but as requiring special justification, and in the absence of such justification to be condemned.' Had they given us this door of escape, I should have thought it expedient to leave the case where it is, and should have advised the hon. and learned Gentleman to withdraw his motion. But if we are told—as I think up to the present stage of the debate we have been told—that everything has been right, that the course of regular precedent has been observed, that the Government have not stretched the discretion of the Executive, have not impaired the rights of the popular branch of the Legislature; if that ground is taken, then, reserving my own freedom as to the second Resolution of the hon. and learned Gentleman, and as to the terms in which it may be proper to characterize these transactions, I, for one, whether few or many agree with me, cannot, by negating this motion, affirm a principle so detrimental to liberty and to the English character as this, that the House of Commons is willing to see the produce of the taxes of the people, which it is our exclusive right to vote, disposed of in the East for the purposes of a warlike policy, at the discretion of the Minister of the Crown, and without the knowledge, assent or control of the representatives of the British nation.

## POWER TO MAKE WAR

LORD PALMERSTON

*House of Commons, 16 July 1857*(146 *Parl. Deb.*, 3 s., 1638 ff.)

[SEE note on No. 50.]

Sir, I cannot approve either the constitutional doctrine or the constitutional conduct of the hon. and learned Gentleman who has moved these Resolutions [Mr. Roebuck]. If I understand the doctrine which he has endeavoured to lay down, it is this—that the Crown has no right either to make war or to make peace without previous communication with, and without the previous concurrence of, Parliament. Now, Sir, I deny that that doctrine is any part of the British Constitution. I contend, on the contrary, that our Constitution wisely and properly vests in the Crown the prerogative and the discretion of declaring war and of making peace, with this reserve, however, which I readily admit, that when the advisers of the Sovereign have deemed it their duty to counsel the Crown either to engage in or to put an end to war, it is incumbent on them to lay before Parliament, if it is sitting, the grounds upon which the one course or the other has been adopted; or, if Parliament is not sitting, when the interests of the country are deemed to be such as to require recourse to be had to war, I frankly and freely admit it to be their duty to take the earliest opportunity of calling Parliament together in order to submit to it their reasons for resorting to hostilities. I should be the last man to deny that general proposition. I maintain, however, that in the case to which the motion alludes, there were circumstances which rendered it a special one, and excepted it for the moment from the application of that general rule. . . .

With regard to this particular case itself, I freely admit



that it does involve a question which Parliament is well entitled to have explained to them, and which, if left open to any interpretation that might be put upon it, would perhaps be turned into a precedent which might be attended with injurious consequences in future. But the right hon. Gentleman who spoke last [Mr. Gladstone]—who cannot, I think, have been present in the course of this evening—is quite mistaken in saying that no explanation has been given by any member of the Government of the peculiar circumstances which make this case an exception to the general rule. My right hon. Friends, the Chancellor of the Exchequer and the President of the Board of Control have both stated in great detail the reasons why Her Majesty's Government thought this an instance in which the immediate convocation of Parliament was not required. Some have contended that Parliament ought to have been called together when the first order was sent to Bombay for the preparation of a force to be ready in case it should be wanted. The answer given to that by my right hon. Friend appears to me quite conclusive. It would have been the height of absurdity to proclaim through Parliament to the world that we were making preparations which in a certain event would be carried into effect, with a view of either preventing or repressing a wrong which the Government of Persia might have in contemplation. Then it is said Parliament should have been summoned later in September, when the order was forwarded to the Governor General to send the expedition. But even then such a step would have been premature, because it was impossible for the Government to know whether circumstances might not occur in India which would prevent the Governor General from immediately acting on the orders so communicated to him. The earliest moment at which it would have been right to call Parliament together with the view of stating to them the course of proceeding with regard to Persia was the 16th of December, when it is acknowledged that the declaration of war was actually issued. Parliament then stood summoned for the 3rd of

February. The Christmas holidays were approaching, and the earliest period at which it could have assembled would have been the first or second week in January. Therefore the only *laches*, if *laches* it was, would refer to the short interval between the middle of January and the 3rd of February, on which day Parliament met.

If the war had been one with a European Power, involving great and serious consequences, and likely to require the immediate co-operation of this House, I admit that even that brief delay ought to have been avoided. But, considering the remoteness of the scene of action—considering that no immediate requisition was necessary to be made to Parliament for the purposes of the war, we thought it would be attaching more importance to the matter than it intrinsically deserved to anticipate the period for which Parliament stood convoked, and to issue a proclamation calling it together a fortnight sooner for the purpose of announcing to it that operations were going on in Persia.

TREATY-MAKING POWER  
 WILLIAM EWART GLADSTONE  
*House of Commons, 24 July 1890*

(347 *Parl. Deb.*, 3 s., 760 ff.)

[In a debate on the Second Reading of a Bill to sanction the cession of Heligoland to the German Empire, Gladstone drew attention to the dangerous implications, from the point of view of the prerogative, which might follow from submitting a treaty to Parliament. The Ministry were surprised at Gladstone's attitude, and the Opposition (Gladstone's supporters) were not impressed with the speech as a tactical move. Gladstone, however, raised an important constitutional difficulty. Cf. No. 49.]

The question of the treaty-making power is undoubtedly one of the most difficult questions of practical politics in the world. The proof of that is to be found in the history of the Constitution of the United States. The able and sagacious men who considered this question there arrived at a solution of the difficulty by adopting a compromise. They gave the power of intervention to the Senate of the United States; they did not give it to the popularly-elected body, and that body has nothing whatever to say with respect to a treaty concluded with a foreign Power, and it has no power of interfering with the conditions of that treaty either directly or indirectly by censuring or punishing those who have made it.

No one doubts, Sir, that this power of treaty-making lies in this country with the Crown, subject to certain exceptions, which, I believe, are perfectly well understood. Wherever money is involved, wherever a pecuniary burden on the State is involved in any shape, I say, it is perfectly well understood, and I believe it is as well known to foreign Powers as to ourselves, that the Government is absolutely powerless without the assent of Parliament,

and that that assent, if given, is an absolutely independent assent, upon which the Crown has no claim whatever, presumptive or otherwise. I believe it to be also a principle—and I speak subject to correction—that, where personal rights and liberties are involved, they cannot be, at any rate, directly affected by the prerogative of the Crown, but the assent of Parliament, the popularly elected body to a representative chamber, is necessary to constitute a valid treaty in regard to them.

But, Sir, setting aside these cases which are well defined both in principle and in practice, there remains a vast range over which this treaty power extends. It is not a question of the cession of territory alone. There is the question of acquisition of territory. The acquisition of territory is as important as the cession of territory. The cession of territory is undoubtedly included in the treaty-making power, and included in what is sometimes called the prerogative of the Crown—a phrase I do not wish to use, because I think it would rather tend to prejudice the case on this occasion; and I am sure it is most important that the members of this House should look at this question from a practical point of view, and should understand what change, if any, is being made, and what the bearing of that change will be upon the practical power and position of this Government.

Now, Sir, what is the true doctrine, according to the best authorities, and what has been the uniform practice with regard to the cession of territory? Heligoland, small as it is, is a territory, and the doctrine applies, in its integrity, to a single acre as much as it does to half a continent. I believe Blackstone may be accepted in this matter as a very sound expositor of constitutional law, and the effect of his language is that the Crown unquestionably has the power of ceding territory, but that Parliament has the right to control the exercise of that power by punishing those who misuse it. . . .

If the House of Commons does not approve of a treaty which has been entered into, it can, of course, turn out the Government of the day, which would be very careful,

on returning to Office, not to enter into such treaties again. The effect of the present system, therefore, be it theoretically good or theoretically bad, places in the House of Commons the supreme control of the treaty-making power of the Crown. Is that to be the case after the treaty-making power comes to be handled by this Bill? It seems to me almost a necessity that out of this proceeding some complications of weight and importance must grow, deeply affecting the relations of the Crown and Parliament and the administration of political power. . . .

I think it is quite obvious that, in a matter such as this, of such vital importance, if we are to depart from the uniform and thoroughly established practice, thoroughly rooted in the Constitution of the country, such a change ought to be made with care and caution, after investigation and upon the full responsibility of Ministers of the Crown, who have not, on this occasion, found it necessary even to mention that such a change was—not meditated, not contemplated, . . . but alive, at work, and embodied in a Bill to which we are now asked to give a Second Reading. . . . I am not disposed to lend any aid in making this precedent on a matter of profound and vital importance in the constitutional practice of this country.

## CONTROL OVER FOREIGN POLICY

SIR EDWARD GREY

*(afterwards Viscount Grey of Fallodon)**House of Commons, 12 April 1911**(24 H.C. Deb., 5 s., 538 ff.)*

[AFTER a Member had drawn attention to the question of the influence of the House of Commons on foreign policy, Sir Edward Grey replied.]

The hon. Member for South Donegal [Mr. Swift MacNeill] says that the House has not sufficient opportunity for discussion of foreign affairs. He says that it rests with the Government to make peace or war. The question of peace or war always has been in the control of the House of Commons. The House of Commons controls that in the same way as it controls other things. Having the power of the purse, the Government cannot go to war without a vote of money by the House of Commons. It is in the power of the House of Commons, especially as regards questions of peace or war, to exercise control. Before a war takes place, the Government asked a vote of money. I take a case which happened in the days when Mr. Gladstone's Government was in power. When war was supposed to be imminent Mr. Gladstone had to come to the House of Commons and ask a Vote of Credit before war took place, and happily no war ever took place at that time. It is absolutely impossible for any Government to contemplate war unless it feels certain that when the moment comes the House of Commons would be prepared to endorse the policy of the Government by voting the supplies which were necessary and without which it would be absolutely out of the power of the Government to go to war at all. . . .

It is always in the power of the House to discuss the foreign policy of the Government. War may arise on

some occasions quite suddenly and require supplies from the House of Commons, and it is unthinkable that the Government should lead up to a war which it thinks contrary to the policy which the House of Commons is prepared to endorse. Then the question of the ratification of treaties would not really affect the question of peace or war. War is not made by treaties. War arises out of circumstances. It may arise quite suddenly. The question of the ratification of treaties is an entirely different point, and it opens a very grave constitutional question—much too serious and grave a question to be dealt with this afternoon on an occasion of this kind—much too serious a question to be dealt with by anybody but the head of the Government. It means a great change in our Constitution to lay down definitely that no treaties were to be ratified until they have first been submitted to and sanctioned by the House of Commons. I do not propose to discuss the merits of that this afternoon. I only say it is a great constitutional change. . . .

The real reason for lack of control, whether with regard to foreign policy or general policy or any great Imperial matter, is the congestion of business in the House of Commons: and if changes are to be discussed by which the House of Commons is to get more control of Imperial affairs generally, I think the more practicable, the most effective, and the most suitable time to discuss changes of that sort would be when the House of Commons has, by constitutional reform, relieved itself of an enormous mass of the local business, both for the United Kingdom and Ireland which at present is in its hands. It would then find for itself much more time to devote to Imperial questions. It is probable that debates on foreign affairs, as well as other Imperial affairs, would be much more frequent, and I believe that the greatest difficulty with regard to controlling foreign policy is not in the Constitution of the country, as it exists at the time, but in the fact that as long as the House of Commons remain without some great measure of devolution, its business will be so congested that, with the best will in the world,

they would never be able to acquire that control of Imperial policy which it can only acquire by frequent debates on important subjects.

With regard to secrecy, I can only say, as the hon. Member for Donegal no doubt knows, that there is a great deal in foreign affairs which cannot be disclosed. Secrecy there must be up to a certain point, because in foreign affairs we are dealing with the relations with other countries, with secrets which do not belong to us specially, but which we are sharing with some one or more foreign Powers. Therefore we cannot, especially at the early stages of negotiations, take the House of Commons publicly into our confidence, because we should be disclosing to the world matters which concern not only ourselves, but the other Powers with whom we are in negotiation; and very often at an early stage of negotiations to make a premature disclosure would result in the other Power desiring to break off the negotiations altogether. If you ask anybody who has had experience of business, or has had anything to do with negotiations between employers and trade unions, to consider how, if from the very beginning all the suggestions put forward by one side or the other, and concerning which one side or the other might be willing to make concessions if they received certain concession from the other, were conducted in public, they will tell you that it would prejudice the chance of any successful result being arrived at. So it is with nations.

But I quite agree that, when an important change or anything of very great importance is going to be done, or there is anything that is likely to be a matter of great controversy, it is desirable as far as possible to take the House of Commons into confidence. It was for that reason the other day, while speaking on the subject of an Arbitration Treaty, it being a new *départure*, I suggested that that was something which the House of Commons should have before them before it was finally ratified and concluded. So with these other matters.

Negotiations are now proceeding about the Baghdad



Railway. They are in a stage which is entirely tentative at the present time, and they are exactly in that stage where to make premature disclosures—say, for instance, when proposals were made which were unacceptable, would prejudice the success of the negotiations, and would not promote a favourable result. Always at the beginning of negotiations of this kind one side or the other makes proposals which are not acceptable, but these are not intended to be final proposals, but if they were immediately disclosed and discussed, and seemed to be unacceptable, then the result would be exceedingly discouraging, and they would begin to be afraid on one side or the other that the concessions which had been made on one side or the other were unreasonable, and at once a harsher atmosphere would be brought into the whole of the negotiations which is unfavourable to a successful result.

## CONTROL OVER FOREIGN POLICY

ARTHUR JAMES BALFOUR

*(afterwards Earl of Balfour)**House of Commons, 19 March 1918**(104 H.C. Deb., 5 s., 869 ff.)*

[IN a debate on a motion by Mr. C. P. Trevelyan for the appointment of a Standing Committee of the House of Commons regarding foreign affairs, with the object of enabling members to have fuller knowledge of the subject and the House 'to exercise closer supervision over the general conduct of foreign affairs', Balfour spoke for the Government.]

What is the business of the Foreign Office of this country and of every other country in its aspect of an international machine? It does not pursue strange and secret aims. I think the British world perfectly understands and could thoroughly describe the broad ends for which British diplomacy works. We want to keep on good terms with our neighbours. Questions are perpetually arising, sometimes large, sometimes small, ranging perhaps on the one side from some great boundary question between two great empires to the gas lighting of Bangkok on the other. All these questions have to be dealt with by some Department. The objects which the Government have in view in dealing with them are quite simple, are quite plain, and are known to all the world. What is not simple, what is not plain, and what is not easy, is the actual day-to-day carrying out of the negotiations by which the end is to be attained. A Foreign Office and a Diplomatic Service are great instruments for preventing, so far as it can be prevented, and diminishing, even when you cannot prevent, friction between States which are, or which ought to be, friendly. How is the task of peacemaker—because that is largely the task which

falls to diplomatists and to the Foreign Office, which controls diplomatists—to be pursued if you are to shout your grievances from the housetop whenever they occur? The only result is that you embitter public feeling, that the differences between the two States suddenly attain a magnitude they ought never to be allowed to approach, that the newspapers of the two countries agitate themselves, that the Parliaments of the two countries have their passions set on fire, and great crises arise, which may end—have ended sometimes—in international catastrophes.

One of the main businesses of the Foreign Office is to see that the interests of this country are not neglected or sacrificed, and yet to see in regard to the inevitable small collisions, the small questions of dispute, the small troubles which must arise when an empire like the British Empire, stretching over the whole world, is the next-door neighbour to heaven knows how many countries, and has interests connected with them—that as these questions arise and when they arise—they are constantly occurring—we should never let British interests be unduly sacrificed, nor that great international quarrels, or international rivalry, should be allowed to arise over small matters.

My hon. and gallant Friend who has just sat down referred in one of the most interesting parts of his speech to the Anglo-French Convention—the Entente. I was very closely concerned with that great transaction. What was the motive animating the British Foreign Office and the British Government at that time? It was not the desire to carry out secret diplomacy by ancient and musty methods. It was a common-sense ambition, a common-sense desire, looking round the world, and seeing how British and French interests were always having little collisions and producing little difficulties in every part of the world, from Arabia to Newfoundland—it was seeing that this was always happening that made the statesmen of the two countries feel that if they went on the old lines there would never be those cordial relations which, in our

view, were absolutely necessary, not merely for the prosperity of the countries most directly concerned, but for the interests of the world at large and for the maintenance of peace. That was the object. Do you call that 'secret diplomacy'? It seems to me to be the most idiotic name to give it, but you may call it that if you like. How could you have carried out that long-drawn and complicated series of negotiations if our own Foreign Minister had spent his time in discussing the matter with thirty or forty gentlemen, whom the hon. Gentleman pictures as making our foreign diplomacy more democratic than it is, instead of devoting himself to the varied problems, the complex aspects of which were inevitably the most difficult to master, and which had to be dealt with in constant discussion with the diplomats on the other side? . . .

You have to consider, when you are perfecting your parliamentary machinery, which, in the main, is your machinery of criticism, whether you are not weakening your machinery for action. This House is not an executive body, cannot be an executive body, and if it tried to be an executive body would do its work altogether abominably. The 670 gentlemen could not do it, and no delegation to Committee Rooms of forty or fifty could do it. That is not the way the work of the world is done anywhere if it is done effectively. No house of business manages its affairs in that way; no Army and no Navy manages its affairs in that way. Those who aspire to that ideal of popular machinery and call it 'democratic' confuse administration with criticism and legislation. Administration is one thing; criticism and legislation are another. You should have your control over those who manage your affairs, but it is not the kind of control which the hon. Member wishes to set up with his Committee of forty or fifty. It is quite a different control. You must know, broadly speaking, what are the general lines of policy, and I maintain that that is thoroughly known with regard to foreign affairs at this moment by every man in this House who takes the trouble to think.

The general lines on which we are proceeding are

thoroughly known. If the House or any large body of the House thinks we are proceeding on wrong lines, turn us out—that is the proper remedy—but do not suppose that we can do the work better by having to explain it to a lot of people who are not responsible. That is not the way to get business properly done.

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